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Volume 3, No. 2, Pages 195 to 476,
January 19 - January 29, 1988.

FCC Record

A comprehensive compilation of decisions, reports, public notices and other documents of the Federal Communications Commission of the United States.

FEDERAL COMMUNICATIONS COMMISSION

Dennis R. Patrick, Chairman

James H. Quello

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Patricia Diaz Dennis

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Citation Form: 2 FCC Rcd 1 (1987)

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*Commissioner Dawson resigned effective December 4, 1987.

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Before the
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Washington, D.C. 20554

In the Matter of

U S West's Permanent Cost Allocation Manual for the Separation of Regulated and Nonregulated Costs — AAD 7-1693

MEMORANDUM OPINION AND ORDER

Adopted: December 28, 1987; Released: January 19, 1988

By the Chief, Common Carrier Bureau:

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I. INTRODUCTION AND BACKGROUND

1. In the *Joint Cost Order*,[1] the Commission adopted standards that certain subject carriers, including the U S West telephone operating companies (U S West),[2] are to follow in separating the costs of regulated telecommunications services from the costs of nonregulated activities, and in determining the costs of transactions between regulated and nonregulated affiliates. The Commission required the U S West telephone operating companies to file cost allocation manuals incorporating these standards by September 1, 1987. [3] The manuals were to be based on the new Uniform System of Accounts (USOA),[4] and subject to public comment and our review prior to implementation.[5] The Commission intended that we complete the review process in time for implementation of the manuals to occur concurrently with the implementation of the new USOA on January 1, 1988.[6]

2. In response to these requirements, U S West filed a manual on behalf of its telephone operating companies on September 1, 1987. The manual contains sections on U S West's nonregulated activities, incidental activities, affiliate transactions, employee time reporting procedures, and proposals for allocating amounts recorded in USOA accounts and subaccounts between regulated and nonregulated activities. As part of its cost allocation proposals, U S West asks that it not be required to project peak relative usage of certain plant that will provide both regulated and nonregulated services.

3. Six parties commented on U S West's manual,[7] and S West replied to the comments. In addition to considering the pleadings, we have reviewed the manual for consistency with Commission rules and policies. This review has revealed a number of areas U S West will have to clarify or change, and we discuss each of these areas in this *Order*. We determine that, despite the need for additional information in certain areas, the manual provides adequate assurances against the misallocation of costs and revenues to the five nonregulated activities in which U S West presently engages to permit the manual's implementation on January 1, 1988. We are concerned, however, that U S West's proposals for critical central office and outside plant accounts are inconsistent with Commission requirements, and we intend to reassess the potential for cross-subsidization when we evaluate the new methods U S West will be submitting in response to this Order. Our approval of U S West's manual will be conditioned upon (a) the filing, within sixty days of the release of this *Order*, of a revised manual responding to the requirements stated in this *Order* ; and (b) whatever action, if any, we may deem necessary or appropriate in light of the amendments U S West files. U S West is also required to make its revised manual effective as of January 1, 1988.[8]

4. This *Order* has three substantive sections. Section II discusses the overall sufficiency of the manual as well as the portions of the manual that purport to describe U S West's nonregulated activities, incidental activities, affiliate transactions, and time reporting procedures. Section III discusses U S West's proposed cost allocation methods. Section IV discusses procedural matters related to the cost manual, including procedures for amending and updating the manual.

II. GENERAL ISSUES

A. Sufficiency of Detail

5. In the *Joint Cost Order*, the Commission determined that each cost allocation manual must contain certain information regarding the operating telephone company's nonregulated activities, incidental activities, corporate affiliates, affiliate transactions, cost allocation procedures, and time reporting procedures. While U S West's manual purports to provide that information,[9] MCI contends that the manual lacks the level of detail necessary for effective review. In particular, MCI states that U S West has not elaborated on the details of the "direct reporting" method

by which it proposes to apportion USOA accounts into cost pools. As a consequence, MCI argues, the Commission will be unable to review, audit, and oversee U S West's cost pooling processes. MCI contends that U S West's cost allocation proposals are also vague and that U S West should be required to justify its proposed allocation methods.[10]

6. In response, U S West contends that its manual will permit the proper separation of the costs of regulated and nonregulated activities, and is sufficiently detailed to let an objective examiner confirm that proper separation will occur. U S West argues that the information MCI seeks goes beyond that which the Commission intended to require for cost allocation manuals. U S West states that its independent auditors have indicated complete confidence in their ability to audit the manual. According to U S West, the detailed methodologies demanded by MCI will be available to those auditors.[11]

7. Although we are not certain that the level of detail MCI seeks would be consistent with the level of detail the Commission has required, we cannot accept U S West's position that its manual provides all the detail needed for effective audits and Commission oversight. Our responsibility is to understand how this manual would work and whether it would create a potential for improper cost shifting between regulated and nonregulated activities. To discharge this responsibility, we must determine whether the manual addresses each of the subject-matter areas required by the Commission, and whether it makes clear how cost categories are formulated and how costs are apportioned between regulated and nonregulated activities.

8. In certain respects, U S West's manual meets the Commission's requirements. We are concerned, however, that many sections of the manual are ambiguous or insufficiently detailed, and that inconsistent interpretations by the Commission, U S West, and the independent auditors are possible. This concern arises principally in relation to S West's cost allocation tables. In the *Joint Cost Order*, the Commission established a costing methodology under which the amounts recorded in USOA accounts or subaccounts are to be apportioned into homogeneous cost categories or pools, which in turn are to be assigned to, attributed to, or allocated between regulated and nonregulated activities.[12] The Commission determined that the number of cost pools each carrier should use should reflect the extent of the carrier's involvement in nonregulated activities, the cost of adding additional pools, and the impact the additional pools would have on the accuracy of cost allocation results.[13] The Commission stated that cost categories should not be so numerous as to preclude the orderly administration of the manual over time.[14] The Commission also determined that carriers should directly assign costs to regulated and nonregulated activities wherever possible. Those costs which cannot be directly assigned are to be attributed to, or allocated between, regulated and nonregulated activities using factors reflecting cost causality.[15]

9. Our review of U S West's manual has focused on whether U S West's proposals properly reflect these criteria. We are concerned that the manual provides little insight into the methods U S West states it will use to apportion amounts recorded in USOA accounts into cost pools and to allocate particular pools between regulated and nonregulated activities. We are also concerned that U S West's proposals, for a number of specific accounts, are inconsistent with the methodology the Commission has prescribed.

10. U S West's position appears to be that the manual must be sufficient if the independent auditors indicate they can audit its application. We reject that position. The test for sufficiency is whether the manual is consistent with Commission requirements, and U S West will have to submit a considerable amount of additional information and to reformulate much of its manual before we can verify that it meets Commission requirements in all respects. The subsequent portions of this *Order* describe the information that must be submitted, and the ways in which U S West's apportionment and allocation methods must be revised. We do not believe that we must reject the manual pending the submission the additional information and revised methods. Because U S West presently engages in only a limited number of nonregulated activities, we believe that there will be adequate assurances against cross-subsidy if we allow U S West to implement its manual on January 1, 1988, while requiring that the manual be revised and that the revised manual be made effective as of that implementation date. Our approval of the manual is conditioned upon the timely submission of a revised manual responsive to the matters discussed in this *Order*.[16]

B. Description of Nonregulated Activities

11. In the *Joint Cost Order*, the Commission determined that cost allocation manuals should describe each of the nonregulated activities in which the subject telephone operating companies engage.[17] In response to this requirement, U S West lists as its nonregulated activities: (a) the joint marketing of customer premises equipment (CPE); (b) nonregulated protocol conversion; (c) customer telecommunication services, which include inside wiring installation and maintenance; (d) planning for nonregulated services; and (e) alarm services.

12. Colorado, Iowa, and Minnesota argue that services deregulated in their states, but not at the federal level, ought to be treated as nonregulated activities. According to these parties, the Commission's rule requiring activities deregulated only at the state level to be treated as regulated for accounting purposes produces inequitable results.[18] They argue that absent such treatment, U S West will be able to earn profits from such activities that are not attributable to its efficiencies of operation. This would happen, according to these commenters, because some of the costs produced by intrastate activities would flow to the interstate jurisdiction and interstate ratepayers would pay rates that reflect a portion of the costs U S West incurs to provide state-deregulated services.[19] U S West maintains that the state commenters' position is inconsistent with the *Joint Cost Order* and that treating state-deregulated services as regulated activities for accounting purposes will not interfere with state ratemaking interests.[20]

13. In the *Joint Cost Order*, the Commission determined that basic services that are deregulated in particular states, but not preemptively deregulated, should be treated as regulated activities for accounting purposes.[21] The Commission found that if it were to permit statederegulated services to be classified as nonregulated prior to the application of jurisdictional separations, it would have to determine which services and activities the states had deregulated. The administrative burdens associated with this

process would be so great, the Commission concluded, that the process of implementing the manuals could be delayed. Since the state commenters' proposal is inconsistent with the Commission determination, we must reject it. In addition, we are not at all certain that the problem identified by the states is substantial enough to provide an opportunity for cross-subsidization antithetical to a free and open market for nonregulated services. Our review of the jurisdictional separations rules indicates that the majority of the costs associated with these deregulated services is driven to the intrastate jurisdiction.

14. Colorado also raises questions concerning U S West's treatment of alarm services. Colorado first asks us to clarify that alarm services are a nonregulated activity. Colorado also asks why U S West's cost allocation proposals single out alarm services for separate cost pool treatment only twice, in Account 2232 for investment and Account 6232 for expense.[22] U S West responds that alarm services are nonregulated and that the account is being properly allocated.[23]

15. The alarm services provided by U S West are enhanced services. The Commission has treated enhanced services as nonregulated since its *Computer II Final Decision*,[24] We believe that the additional information we request, *infra*, from U S West regarding its cost pool and allocation methods should resolve doubts concerning U S West's adherance to the Commission's requirements for apportioning the cost of nonregulated activities.

16. We impose two requirements on U S West's presentation of its nonregulated activities. These are requirements we have not imposed on other carriers to date, but are, we believe, necessary to ensure that the revised manual submitted by U S West complies with Commission requirements. Our reasons for imposing these requirements relate to our determination, discussed more thoroughly in paragraphs 51-75, *infra*, that U S West's manual lacks the necessary information for us to determine that nonregulated costs in certain key areas are being separated pursuant to Commission requirements.

17. First, although the manual describes U S West's nonregulated activities in sufficient detail for us to determine their general scope, the lack of detail in the cost allocation proposals has made it difficult for us to determine which USOA accounts are affected by each particular nonregulated activity. As we will discuss, *infra*, the relative absence of cost pools and the reliance on cost allocation proposals that are inconsistent with Commission rules require us to obtain specific information from U S West in order to ensure that the revised filing will be consistent with the *Joint Cost Order*. Since we must verify that U S West will not underallocate costs to nonregulated activities, we require U S West to list, on an activity-by-activity basis, each of the USOA accounts its nonregulated activities affect. This list shall be provided in the revised manual as an addendum to U S West's description of its nonregulated activities.

18. Second, we require additional information concerning the direct assignment of costs associated with nonregulated activities. In the *Joint Cost Order*, the Commission determined that carriers should directly assign costs of nontariffed services to regulated and nonregulated activities whenever possible.[25] In its descriptions of its nonregulated activities, U S West indicates it will comply with this requirement.[26] We have been unable to verify that U S West's manual would implement this procedure in relation to all accounts that include costs susceptible of direct assignment. For instance, in describing its nonregulated protocol conversion activities, U S West states "investment which is incurred solely due to protocol conversion will be directly assigned to nonregulated activities."[27] This statement clearly implies that U S West incurs at least some investment solely because of its nonregulated protocol conversion operations and that U S West's cost table provides for the direct assignment of that investment to nonregulated activities. U S West's cost table, however, does not appear to propose the direct assignment of *any* investment that might be associated with its operating companies' nonregulated protocol conversion operations. Thus, we are not certain how U S West intends to implement the Commission's mandate that costs of nonregulated services be directly assigned to regulated and nonregulated activities whenever possible.

19. To eliminate this problem, we require U S West to state, for each of its nonregulated activities and with regard to each USOA investment and expense account those activities affect, whether it anticipates that costs susceptible of direct assignment to the nonregulated activity will be recorded in the account. U S West shall also state, with regard to each account in which it anticipates that it will record such costs, the cost pools it intends to establish to apportion such costs. In the event U S West proposes not to assign any of these costs directly to nonregulated activities, U S West shall show, on a cost-pool-by-cost-pool basis in its revised manual, why direct assignment should not be mandated. U S West shall include this information in the addendum to its description of its nonregulated activities.

C. Incidental Activities

20. In the *Joint Cost Order*, the Commission recognized that carriers engage in a number of miscellaneous nonregulated activities that have traditionally been treated as regulated activities for accounting purposes as a matter of convenience. These incidental activities are outgrowths of regulated operations, and typically generate very small costs and revenues in relation to the carrier's overall costs and revenues. The *Joint Cost Order* permitted carriers to continue to account for incidental activities as regulated activities, but required carriers to list these activities in their manuals. Carriers were also required to justify treating these activities as incidental. To qualify for incidental treatment, an activity must be an outgrowth of regulated operations, cannot constitute a separate line of business, and must have been traditionally treated as regulated for accounting purposes by the carrier claiming incidental treatment. The aggregate revenue from all incidental activities in which a carrier engages shall not exceed one percent of the carrier's total revenues.[28]

21. In its manual, U S West proposes to treat sixteen activities as incidental. Colorado supports this proposal, but states that U S West is treating these activities as nonregulated for accounting purposes in violation of Commission requirements.[29] In response to Colorado's comment, we clarify that the costs of and revenues from incidental activities that meet the Commission's criteria are treated as regulated costs and revenues for both accounting and jurisdictional separation purposes.[30]

22. While the Commission does not require carriers to explain in detail why their incidental activities meet the criteria for incidental treatment, each manual must provide sufficient information to enable us to determine the nature and scope of each activity proposed for incidental

treatment.[31] U S West's manual generally provides the necessary information. However, the manual does not describe the nature and scope of U S West's "training and meeting services," "video studio rental and production services," "heavy equipment rental," "telephone booth advertising," "engineering, consulting, construction, and maintenance services," and "telephone bill inserts" activities in sufficient detail for us to determine whether these activities constitute separate lines of business for U S West. U S West must amend its manual to provide the necessary detail.

23. U S West also lists the ownership and maintenance of embedded network channel terminating equipment (NCTE) that was in place on a customer's premises prior to June 30, 1984 as an incidental activity. We require further justification for this treatment of NCTE. Investment in embedded NCTE in place before June 30, 1984 is considered regulated. As such, it does not qualify for incidental treatment. U S West must amend its manual to delete investment in embedded NCTE from its list of incidental activities. Any activity associated with this investment that has been preemptively deregulated similarly does not qualify as incidental.[32]

D. Affiliate Transactions

24. The *Joint Cost Order* adopted specific rules governing affiliate transactions. The rules were intended to keep carriers from avoiding the cost allocation rules, and the investment risk balance created by those rules, by engaging in transactions in which carriers provide assets or services to affiliates at prices below the carriers' costs, or obtain assets or services from affiliates at prices above the affiliates' costs.[33] Rules governing transactions between a carrier and its affiliate differ depending on the nature of the transaction.[34] If the affiliate transaction involves a transfer of assets, the carrier should record it at the prevailing price held out to the general public, *i. e.*, the prevailing company price. If there is no prevailing company price, asset transfers from the affiliate to the carrier should be recorded at the *lower* of net book cost or fair market value, while asset transfers from the carrier to the affiliate should be recorded at the *higher* of net book cost or fair market value. In the case of services, the prevailing company price also determines the amount to be recorded in the carrier's accounts. If no prevailing price is available, the cost of the service should be allocated pursuant to the cost allocation standards of Section 64.901 of the Commission's Rules.[35] The *Joint Cost Order* also required that carriers include in their cost allocation manuals "[a] statement identifying affiliates that engage in or will engage in transactions with the carrier entity and describing the nature, terms, and frequency of such transactions."[36]

25. In its manual, U S West lists seventeen affiliates that engage in transactions with its telephone operating companies as well as a variety of transactions in which those affiliates engage. Colorado raises a number of issues regarding these transactions. We address those issues below, along the several areas of concern that we have identified.

26. *Status of Bell Communications Research, Inc. (Bellcore).* In the *Ameritech Order*,[37] we determined that Bellcore is an affiliate of each of the BOCs for purposes of the affiliate transactions rules. U S West's manual, however, neither lists Bellcore as an affiliate nor states the nature, terms, and frequency of the transactions between S West's telephone operating companies and Bellcore. Consistent with our decision in the *Ameritech Order*, we require that U S West amend its manual to list Bellcore as an affiliate, and provide all the necessary information about its transactions with Bellcore.

27. *Nature of Transactions.* In its manual, U S West lists "Billing and Collection services" as a service its telephone operating companies provide to U S West Direct, Inc., and to U S West New Vector Group, Inc. Colorado maintains that U S West should be required to state whether this service includes local service shut-off and, if so, to discuss the ramifications of such a practice.[38] In its response, U S West asserts that its manual should not discuss the issue of local service cut-off because that issue lies outside the scope of this proceeding.[39]

28. In the past, the Commission has prohibited local service shut-off only in the limited context of authorizing joint billing of nonregulated CPE services with regulated local service. Restrictions against local service shut off are largely a matter of state law and regulation, particularly in the case of the two services cited by Colorado-directory advertising and cellular or mobile services. We recognize, however, that U S West may not have considered it necessary to mention local service cut-off specifically, even if it intended to provide that service to affiliates when permitted under state law. Therefore, we require that U S West clarify, in its revised manual, its usage of the term, "Billing and Collection services." If U S West uses that term to encompass local service cut-off, it must state the terms under which that service is provided to affiliates as well as the frequency at which it is provided. We will not require U S West to discuss the ramifications of its proposal for local service cut-off in its manual. Such discussion is not encompassed within the requirement that carriers state the nature, terms, and frequency of their affiliate transactions.

29. In addition, U S West's manual indicates that all of its operating companies' affiliate transactions involve the provision of services rather than asset transfers. U S West describes many of its affiliate transactions in sufficient detail to let us discern their overall nature and to confirm that no asset transfers are involved. We have been unable to make these determinations, however, with regard to the operating companies' "Engineering, installation and maintenance," "Information systems," "Time and Line Charge System," and "Coin refund customer support transactions" with Mountain Bell Service Link, Inc.; "Corporate communications" transactions with Northwestern Bell Corporation; "Information systems," "Installation and maintenance," and "Facilities and equipment" transactions with U S West Corporate Communications, Inc.; "Centron Custom system" transactions with U S West Direct and U S West Enterprises, Inc.; and "Third party leasing" transactions with U S West Financial Services, Inc. U S West is directed to state in its revised manual its basis for concluding that these transactions involve only the provision of services.

30. *Terms of Transactions.* The U S West manual proposes to provide and obtain the vast majority of affiliate transactions "at fully distributed cost[s].[40] Colorado contends that U S West has failed to justify this proposal and that the proposal may be inconsistent with Commission requirements. According to Colorado, each carrier must conduct its affiliate transactions at tariffed rates or market prices, unless the carrier engages in the particular type of transaction with nonaffiliates a substantial portion of the time. Colorado suggests that U S West should be required to charge its affiliates market prices for certain types of

services, if the market prices exceed the telephone operating companies' fully distributed costs. Services the nonregulated affiliates provide the operating companies should be charged at market prices, Colorado argues, whenever market prices are less than the nonregulated affiliates' fully allocated costs.[41]

31. U S West contends that Colorado's position is inconsistent with the affiliate transactions rules.[42] U S West states that each service listed in the affiliate transactions section of its manual would be provided "at tariffed rates or market prices if the service is offered to unaffiliated persons or entities, and if not, then the service would be priced at cost," determined in accordance with Commission standards.[43] U S West states that this method complies with Commission requirements.[44]

32. Neither U S West nor Colorado is entirely correct. First, under the *Joint Cost Order*, carriers must charge their affiliates tariffed rates whenever they provide their nonregulated affiliates with tariffed services.[45] Since services that are available under tariff must be provided under tariff, this requirement applies regardless of whether the carrier provides a particular tariffed service to nonaffiliates a substantial portion of the time.[46] It appears that U S West, however, may not be using tariffed rates for certain services that are tariffed.[47] U S West must amend its manual to provide all tariffed services at tariffed rates.

33. Second, when a carrier provides an untariffed service to a nonregulated affiliate, the carrier must record the transaction at the carrier's fully allocated costs unless there is a prevailing company price for the transaction. If there is a prevailing company price, that price applies even if it is lower than the carrier's fully allocated costs for the service. Contrary to U S West's position, however, the mere offering of a service to unaffiliated persons or entities is not sufficient to establish a prevailing company price. Instead, the service must actually be provided to a sufficient number of unaffiliated persons or entities to establish a prevailing price.[48] Since U S West apparently misunderstood this principle when it prepared its manual,[49] it must verify in its revised manual that each of the services its operating companies propose to provide affiliates at market prices is actually provided to unaffiliated persons or entities at that market price.

34. Third, when a nonregulated affiliate provides a service to a carrier, the prevailing company price also applies even if it is higher than the affiliate's fully allocated costs. When there is no prevailing company price, the service must be provided at the affiliate's fully allocated costs. Again, the mere offering of a service to unaffiliated persons or entities does not establish a prevailing company price. The nonregulated affiliate must either provide the service to unaffiliated persons or entities, or the operating company must receive the service from a nonaffiliate a substantial portion of the time.[50] U West must also verify in its revised manual that each of the services its nonregulated affiliates propose to provide its operating companies at market prices meet the above criteria.

35. *Frequency of Affiliate Transactions*. Carriers are required to state in their cost allocation manuals the frequency with which they engage in each of their affiliate transactions.[51] In response to this requirement, U S West's manual states that billing for its operating companies' affiliate transactions "is *generally* rendered on a monthly basis."[52] Colorado argues that U S West's statement is insufficient.[53] In its reply, U S West states that it provides some services "frequently during a day" and other services "that may take months to complete."[54] U S West also states that it included the frequency of the billing process in the manual because that process generates affiliate transactions.[55]

36. U S West's statements regarding the frequency at which its affiliates *generally* propose to bill for affiliate transactions are not responsive to the Commission's requirement that carriers state in their cost allocation manuals the frequency with which their operating companies engage in each of their affiliate transactions. U S West must amend its manual to comply with this requirement. Even if U S West's billing process generates its affiliate transactions, the Commission requires that carriers state the frequency with which they engage in, not the frequency with which they generate, affiliate transactions.

37. *Transactions with Nonaffiliates*. Colorado also contends that U S West should be required to state whether the services listed in the affiliate transactions section of the manual are provided to nonaffiliates and, if so, the terms and frequency at which the services are provided to the nonaffiliates.[56] In Colorado's view, such information would be helpful in determining whether U S West has complied with the pricing methods specified in the affiliate transactions rules.[57] U S West states that the *Joint Cost Order* does not require the information Colorado seeks."[58]

38. The Commission did not require carriers to provide information in their cost manuals regarding transactions with nonaffiliates, and we do not believe that such information is necessary to determine whether U S West's manual meets Commission requirements. Therefore, we will not order U S West to include this information in its revised manual. Our action will not preclude the states from imposing alternative informational requirements in connection with their regulation of U S West's intrastate common carrier communication services.

E. Time Reporting

39. Accurate time reporting by carrier employees is essential to the cost allocation process, because employee wages and salaries constitute a large portion of the carriers' overall costs and because carriers use wages and salaries in a variety of contexts to attribute costs to, or allocate costs between, regulated and nonregulated activities. In the *Joint Cost Order*, the Commission decided that it would not mandate a specific form of time reporting. Instead, companies are free to employ positive time reporting, exception time reporting, or special studies to record employee time. The Commission found that each of these methods would contribute to the accuracy of cost allocation results, and that one method could not readily be applied to all situations. The *Joint Cost Order* required that carriers describe in their manuals the methods they use to teach, monitor, and enforce accurate time reporting. In addition, carriers are required to describe their methods for capturing and allocating the costs of nonproductive time.[59]

40. To record employee time, U S West uses a combination of positive time reporting, exception time reporting, and special studies. U S West states that "all employees who daily work report" use positive time reporting.[60] These employees use field reporting codes to report their time in fifteen-minute increments. U S West also states that its exception time reporting group "includes" those force groups that do not use positive time reporting.[61] According to U S West, these exception time employees use job function codes, product identifiers, and other ac-

counting conventions to identify time spent in increments of one hour or more on work functions that differ from their normal work functions. U S West states further that its special studies are work function related studies and are used for employees who would normally report their time, but who spend less than one time reporting increment (presumably per pay period) on nonregulated activities.

41. U S West states that it will charge nonproductive time directly to regulated or nonregulated activities whenever possible. When nonproductive time cannot be associated directly with either regulated or nonregulated activities, U S West generally uses a "Cost Distribution Module" that assertedly distributes nonproductive time "based upon the time directly reported by specific force groups."[62] In other instances, U S West states that it apportions nonproductive time to regulated and nonregulated activities "based upon the appropriate work function related study, or other assignment method as identified in [its] cost allocation tables."[63]

42. Colorado objects to U S West's time reporting procedures. Colorado claims that U S West is proposing to allocate to regulated activities all routine nonproductive time, *i. e.*, all nonproductive time that is not for paid absences, general safety meetings, appraisal meetings, union meetings, or training sessions. Colorado asks that we require U S West to allocate all routine nonproductive time to regulated and nonregulated activities in the same proportion as positive time reported for these activities.[64] In its response, U S West states that its procedures will charge routine nonproductive time, as well as other types of nonproductive time, to both regulated and nonregulated activities.[65] U S West claims that its "Cost Distribution Module" should be an entirely acceptable process to charge nonproductive time to nonregulated activities and that its work function related studies will automatically spread time to regulated and nonregulated activities "based on direct productive time."[66]

43. We find that, with certain specific exceptions, U S West's manual satisfies the Commission's requirements for employee time reporting. Our review of the manual has verified that U S West's procedures will not result in the allocation of all routine nonproductive time to regulated activities, and we reject Colorado's argument to the contrary. We share Colorado's concern, however, that U S West's procedures for capturing and allocating nonproductive time may be inadequate. U S West states that its positive time reporting employees report only time spent on regulated or nonregulated activities. [67] It is not clear how U S West intends to use its modules, studies, and cost table to capture and allocate nonproductive time for these employees. U S West must clarify, in its revised manual, the procedures it will employ in this regard.

44. Similarly, U S West's manual suggests that its exception time employees may report time spent on functions other than their normal work functions only when it "is spent on a specific regulated or nonregulated product or service."[68] U S West must state, in its revised manual, whether it requires these employees to prepare exception time reports whenever nonproductive time occurs in increments of one hour or more. We are also not certain as to how U S West proposes to capture and allocate nonproductive time occurring in increments of less than one hour. In its revised manual, U S West must also clarify these matters.

45. We are also concerned about the coverage of U S West's time reporting requirements. In its revised manual, U S West shall state the precise coverage of its respective time reporting systems. If any operating company employees would not be subject to time reporting, the revised manual shall list, by job classification, those employees that would not be covered and provide the reasons, if any, for the lack of coverage.

III. COST ALLOCATION PROPOSALS

46. U S West summarizes the methods it proposes to use to apportion costs into pools and to allocate the pools between regulated and nonregulated activities. The parties have raised various issues regarding the proposed cost apportionment and allocation methods and we have identified other issues. We address general issues before turning to issues relating to specific accounts.

A. Use of Company Subaccounts

47. U S West's cost pools generally follow its internal accounting system. This system relies heavily on functional accounting codes to direct costs to subaccounts that U S West has established for its internal accounting purposes.[69] Many of U S West's cost pools correspond to these company subaccounts. Although we do not object to this use of functional accounting codes, we are unable to determine whether the sum of the company subaccounts listed in the cost table for a given USOA account includes all amounts recorded in the USOA account from which the subaccounts are derived.

48. Two examples will help illustrate this problem. First, for Account 4100 (Net current deferred operating income tax), U S West proposes a single cost pool. According to the manual, that cost pool corresponds with company subaccount 4100.2 (Non-property related taxes). From the information provided, we cannot determine whether all of U S West's current deferred operating income taxes are included in this subaccount, *i. e.*, if the subaccount equals the USOA account. Similarly, the four cost pools U S West proposes for Account 2362 (Other terminal equipment) correspond to company subaccounts 2362.1, 2362.7, 2362.8 and 2362.9. It is unclear whether these subaccounts will include all costs to be recorded in Account 2362. In its revised manual, U S West must state, for each USOA account that its cost table disaggregates into subaccounts not prescribed in the USOA, whether the listed subaccounts include all amounts recorded in the USOA account. In the event unlisted, company subaccounts include amounts recorded in the USOA account, U S West shall revise its cost table to include those amounts or explain why such inclusion is not required.

B. Procedures for Apportioning Costs into Pools

49. U S West proposes to use a variety of methods to apportion costs into these cost pools. These methods include the use of functional accounting codes[70] as well as the "analysis" or "study" of motor vehicle type,[71] aircraft investment,[72] floor space usage,[73] computer usage,[74] and machine utilization and other statistics.[75] U S West states that its functional accounting codes "allow the formation of cost pools on a very specific functional basis through direct reporting."[76]

50. In our discussion of MCI's argument regarding the overall sufficiency of the manual, we stated that we must understand the methods U S West intends to use to apportion costs into pools.[77] While we do not find it necessary to require U S West to identify and justify each of the functional accounting codes upon which it proposes to rely, U S West has not explained how its use of these codes will ensure that costs are apportioned into the appropriate cost pools. Nor has U S West made clear precisely what it contemplates in relation to the analyses and studies it proposes. Because we wish to ensure that the Commission, U S West, and the independent auditors share a common understanding of the manual, we direct U S West to describe the steps it will employ to apply each of the methods it proposes to use to apportion amounts recorded in USOA accounts into cost pools. If any of the steps involves the sampling of charges to an account or of other records, U S West should state the sample criteria it intends to employ.

C. Cost Assignment and Allocation Methods

51. *Principles*. The *Joint Cost Order* specified that carriers must apply certain principles in separating the costs of their regulated activities from those of their nonregulated activities. The Commission required that tariffed services be provided to nonregulated activities at tariffed rates and that costs of nontariffed services be directly assigned whenever possible. When costs of nontariffed services cannot be directly assigned, the carrier must attempt to allocate them based upon the direct analysis of their origin. When direct analysis of such costs is impossible, the carrier must allocate the costs based upon an indirect, cost-causative linkage to another cost category or group of cost categories. The general allocator is to be used only when the costs cannot be directly assigned and neither direct nor indirect measures of cost causation can be found. Finally, when the carrier uses central office equipment and outside plant for the shared provision of regulated and nonregulated services, the carrier must allocate the costs on the basis of peak relative nonregulated usage of the investment over a three- year forecast period.[78] U S West's manual applies none of these principles properly.

52. *Use of Tariffed Rates*. U S West maintains an internal official communications system that uses central office equipment and outside plant to support both regulated and nonregulated activities. The investment in this equipment and plant is recorded in Accounts 2211 through 2232 and in Accounts 2411 through 2411. U S West proposes to create "Official" and "All other cost pools for each of these accounts."[79] Usage sensitive investment would be separated into these cost pools "based on a periodic state-wide usage study."[80] Non-usage sensitive investment would be separated into one of the two cost pools "based on current access lines."[81] The manual does not further define these apportionment methods.

53. The manual proposes to assign the "All other" cost pools directly to nonregulated activities. The "Official" cost pools would be allocated between regulated and nonregulated activities "based on the prior month's wages and salaries in Accounts 6112 through 6728, less plant nonmanagement wages in the 63XX and 64XX accounts."[82] U S West states that because investment in the "Official" cost pools supports both regulated and nonregulated activities on a non-separable basis, the issue of peak relative usage is not relevant to such Official support investment.[83]

54. Western Union objects to these proposals. Western Union contends that U S West should be required to assign its investment in this equipment and plant directly to regulated activities, and to charge its nonregulated activities tariffed rates for the use of the equipment and plant. Otherwise, Western Union argues, U S West would be able to provide communications facilities and services to its nonregulated activities under preferential cost-sharing arrangements not available to its competitors.[84]

55. In its response, U S West agrees that it should use tariffed rates when its operating companies provide specific tariffed services to nonregulated entities and for "Official Company Service" provided as support to nonregulated entities. However, U S West argues that it should not be required to use tariffed rates when it provides communications services that support both regulated and nonregulated entities. In U S West's view, company official communications are a "nonseparable common support function which supports both regulated and nonregulated entities."[85] The costs of such services must be allocated, according to U S West, because the services generally support employees who perform shared functions. U S West maintains that if it were to adopt Western Union's suggestion and charge itself for internal services at tariffed rates, its operating companies' total books of accounts would not balance.[86]

56. There are several problems with U S West's proposed methodology that require correction. First, U S West admits that its proposal does not purport to follow the Commission's requirement that tariffed services be provided at tariff rates. U S West argues that it is incapable of charging a tariffed rate to nonregulated activities, apparently because some of its internal telephone lines are used jointly by nonregulated functions, and that a separate nonregulated "tariff" can not exist. Its explanation of why application of the Commission's first cost allocation principle cannot apply therefore rests on the notion that its official communications network is jointly-used by regulated and nonregulated activities. Having settled in this theory, however, U S West finds itself facing another of the Commission's cost allocation principles--that jointly-used network plant must be allocated based on forecast peak nonregulated usage over three years. U S West, however, chooses to ignore this rule by stating that forecasted allocations in this situation are "not relevant," and dividing the costs in such a manner as to approximate actual usage.

57. We believe there are methods by which carriers can capture tariffed costs of telephone service provided to nonregulated activities, consistent with the Commission's rules. Furthermore, we believe that these methods avoid the need to forecast nonregulated telephone usage that is required if the internal provision of telephone service is viewed as a shared activity. One method we would consider acceptable is for U S West to calculate the amount it would have paid had all of its internal communications been obtained under tariff. The "actual use" measures proposed in U S West's manual--current access line counts and periodic state-wide usage studies-- would assist U S West in making this determination. An allocator reflecting total company involvement in nonregulated activities, such as total company wages and salaries, could then be applied to the total cost to derive an imputed nonregulated cost for telephone service under tariff. That amount could then be debited to Account 7991 and credited to the revenue accounts. Furthermore, any internal telephone service that

could be identified as dedicated to regulated or nonregulated activities could be directly assigned so that the calculations we described would only have to be performed in jointly-used plant.

58. The method we have described would achieve the Commission's objective of avoiding cross-subsidization of nonregulated services in a manner consistent with the Commission's rules. Because our suggested method implements Commission policy with the minimal burden on carriers consistent with that policy, we will not require the account-by-account cost allocations that are mandated by the *Joint Cost Order*. We believe that ratepayers are adequately protected by our adherence to the rule that tariffed services employed by nonregulated activities must be provided at tariffed rates.

D. Undefined Terminology

59. In its manual, U S West uses a variety of methods to allocate cost pools between regulated and nonregulated activities. These methods include the "[a]nalysis" of specific entries to company subaccounts,[87] or assignment based on methods such as the following: "specified accounts, cost pools, or company subaccounts,[88] corresponding plant accounts after categorization to plant accounts,[89] related investments in specified accounts,"[90] "the inward movement of all related products and services,[91] and company subaccounts that the manual does not list.[92] The manual makes only minimal attempts to define its various allocation bases. Since we must ensure that the Commission, U S West and the independent auditors share a common understanding of each method U S West will use to attribute costs to, and allocate costs between, regulated and nonregulated activities, U S West is directed to define, in its revised manual, each of its attribution and allocation methods.

E. Use of the General Allocator

60. In the *Joint Cost Order*, the Commission determined that carriers should use a single-factor, general allocator to allocate residual costs. The Commission defined the general allocator as the ratio of all expenses directly assigned and attributed to regulated and nonregulated activities.[93] The Commission specified that carriers should use the general allocator only for those nontariffed services whose costs cannot be directly assigned, directly attributed, or indirectly attributed to regulated and nonregulated activities.[94]

61. The U S West manual proposes to calculate the general allocator in accordance with the formula specified in the *Joint Cost Order*. [95] Colorado objects to this proposal. Colorado contends that the general allocator should reflect expenses of nonregulated activities summarized in Account 7990 (Nonregulated net income), in addition to the expenses that are directly assigned, directly attributed, or indirectly attributed to regulated and nonregulated activities. Colorado argues that, even though the activities reflected in this account do not employ common plant or resources, all regulated and nonregulated activities benefit from residual overhead costs in the absence of structural separation.[96] U S West states that it has no current plans to use Account 7990 for nonregulated costs and that expenses incurred in connection with activities recorded in Account 7990 should be excluded from the calculation of the general allocator.[97]

62. This proceeding is not the proper forum for challenging the method the Commission specified for calculating the general allocator. Therefore, we must reject Colorado's argument regarding the the inclusion of expenses incurred in connection with activities reflected in Account 7990. We emphasize, however, that carriers are to use Account 7990 to account for only those activities conducted through telephone operating companies that do not involve the joint or common use of any asset or resources.[98] If an activity offered through a telephone operating company benefits from any joint or common costs, including residual overhead costs, Account 7990 is not to be used.

63. Although U S West is proposing to calculate the general allocator in accordance with Commission requirements, we find that, in many instances, U S West is proposing to employ the general allocator when more cost-causative allocation methods are available. This conclusion has several bases. First, U S West proposes to allocate certain cost pools between regulated and nonregulated activities based on its "[a]nalysis of [s]pecific [e]ntries" to the account or (company subaccount) from which the cost pool was apportioned.[99] According to U S West, if this analysis "clearly identifi[es]" a transaction "as supporting regulated or nonregulated activities," the costs of the transaction "will be assigned accordingly." Transactions not clearly identifiable as supporting regulated and nonregulated activities will be assigned based on the [g]eneral [a]llocator.[100] This method does not comply with the Commission's requirement that the general allocator be used only for those cost that the carrier cannot directly assign, directly attribute, or indirectly attribute.

64. U S West's statement in its description of its cost allocation methods, that "[a]ny accountssubaccounts not specifically identified will be allocated based on the [g]eneral [a]llocator"[101] also indicates that U S West is not using the most cost causative allocation methods. In other portions of this *Order*, we require U S West to propose allocation methods for USOA accounts[102] and company subaccounts[103] that have been omitted from the manual. It would be improper to apply the general allocator to these accounts and subaccounts unless more cost-causative methods were unavailable.

65. Our belief that U S West is applying the general allocator even though more cost-causative methods are available is also based upon the use of the general allocator in U S West's cost tables. One example will illustrate this point. In Account 2113 - Aircraft, U S West proposes to apply the general allocator to its cost pool for fixed winged aircraft. U S West states that it "generally" uses its fixed winged aircraft to transport officers and executives. U S West explains that "[s]ince these employees would not be dedicated to specific regulated and nonregulated products, the general allocator is used to allocate this investment in a cost-effective manner."[104]

66. This cost allocation approach is inconsistent with the Commission's mandate that the general allocator be used only when direct assignment, direct attribution, and indirect attribution are not available.[105] Thus, U S West's explanation of its proposal for Account 2113 indicates that it may have used the general allocator without first exploring the possibility of applying an allocation factor more closely related to cost causality.

67. In order to ensure that U S West is complying with Commission requirements, we require U S West to justify each use of the general allocator that it proposes in its

revised manual. U S West's showings shall be presented on a cost-pool-by-cost-pool basis and shall be included in the cost table in U S West's revised manual. We caution U S West that we will reject unjustified proposals to apply the general allocator. If use of the general allocator cannot be justified, we shall require U S West to replace the general allocator with a more cost-causative method of our own choosing that better protects ratepayers.

F. Compliance with Peak Relative Nonregulated Usage Projection Requirements

68. In the *Joint Cost Order*, the Commission required that investment in jointly-used central office equipment and outside plant be allocated between regulated and nonregulated activities based on forecast peak relative nonregulated usage of the plant over its entire depreciable life.[106] U S West proposes to use other allocation methods for the central office equipment and outside plant used in its official communications system and its nonregulated protocol processing operations. As we have previously discussed, U S West states that the forecast requirements do not apply to the equipment used in its official communications system because that investment supports both regulated and nonregulated activities "on a non-separable basis."[107] Its protocol processing operations, U S West states, completely meet the peak relative usage projection requirement because its allocation factor assumes that "a theoretical maximum of packets undergo protocol conversion."[108] IBM opposes U S West's proposals. IBM argues that U S West's methods would make ratepayers bear investment risks which U S West's shareholders should bear.[109]

69. Subsequent to the filing of IBM's comments, the Commission's *Reconsideration Order* reduced the forecast period for jointly-used network plant to three years in recognition of the practical difficulties of forecasting usage over lengthy periods.[110] The Commission determined that carriers seeking to use shorter forecast periods would have to make a specific, detailed showing to justify their waiver requests.[111] In its reply, U S West does not address the waiver criteria. Instead, S West argues, in effect, that those criteria do not apply to its situation because the forecast period requirement does not apply to its current nonregulated activities.[112]

70. We confirm that the Commission's requirement that carriers allocate their investment in central office equipment and outside plant applies to all of U S West's nonregulated activities. We find that U S West's proposals deviate from that requirement. The allocation method U S West presents for its protocol processing operations "reflects . . . additional equipment utilization" caused by protocol processing.[113] The Commission explicitly rejected such incremental cost methods in the *Joint Cost Order*. [114] Similarly, if U S West uses central office equipment and outside plant for any nontariffed service in connection with its official communications system, it must, absent a waiver, allocate the costs of that equipment based on projected peak nonregulated usage.[115] In other portions of this *Order*, we require U S West to reformulate its cost allocation proposals for the central office equipment and outside plant accounts used in its official communications system and protocol processing operations.[116] In its reformulated proposals, U S West shall either follow the peak relative nonregulated usage projection requirements or address the criteria that the Commission has established for waiver of those requirements.[117]

G. Protocol Processing

71. *Digital Switching Investment*. U S West's nonregulated activities include protocol conversion operations it conducts in connection with its regulated packet switching operations. Both services use digital equipment whose costs are recorded in Account 2212 (Digital electronic switching). U S West has created a single packet switching protocol conversion cost pool for that investment.

72. U S West proposes to follow a four-step process to allocate this cost pool between regulated and nonregulated activities. First, U S West would calculate a network utilization rate element percentage (NURE). Accordingly to U S West, the NURE "reflects the additional equipment utilization required for packets that are protocol converted." To calculate its NURE, U S West would rely on "vendor engineering studies based on a theoretical peak of packets being protocol converted by the equipment which provides packet switching and protocol conversion."[118] Second, U S West would determine the access concentrator investment, total public packet switching investment, and network control center investment it has in its public packet switching network. Third, U S West would divide its access concentrator investment by the difference between its total packet switching investment and its network control center investment.[119] Finally, U S West would multiply the resulting product by its NURE to obtain its allocation factor for the shared digital switching investment contained in its packet switching cost pool.[120]

73. We have already found that U S West's method is inconsistent with the Commission's requirement that carriers allocate their investments in jointly-used digital electronic switching equipment based on projected peak relative nonregulated usage.[121] Consequently, U S West must propose in its revised manual an entirely new method for allocating its protocol processing and packet switching investment between regulated and nonregulated activities. Consistent with Commission requirements, the revised method shall provide for the direct assignment of the investment whenever possible, and for allocation of shared investment on the basis of projected peak relative nonregulated usage.

74. *Expenses Related to Protocol Processing*. In Account 6212 (Digital electronic expense) and 6532 (Network administration expense), U S West has created cost pools for expenses related to its protocol processing and packet switching operations. U S West proposes to allocate these cost pools between regulated and nonregulated activities "based on Digital Electronic Switching-PPSN, Account 2212."[122] Since the manual proposes no "Digital Electronic Switching-PPSN" cost pool for Account 2212, we believe that U S West intended to refer to the "Digital Electronic Switching-Packet SwitchingProtocol Conversion (PPSN)" cost proposed for Account 2212. In its revised manual, U S West must clarify this proposal. In addition, U S West shall state, in its revised manual, the extent to which this proposal encompasses maintenance expense related to shared digital equipment and propose an allocation method for such expenses that is based on current usage.[123]

75. U S West proposes to use a "Ratio of Protocol Conversion Usage" to allocate other expenses associated with its protocol processing and packet switching operations between regulated and nonregulated activities. U S West would calculate this ratio by dividing the volume of network traffic that undergoes protocol conversion by the volume of network traffic that undergoes either basic

packet switching or protocol conversion.[124] U S West has not stated in the manual how it intends to measure traffic volumes.

76. We are uncertain as to how U S West intends to measure traffic volumes, and accordingly are unable to determine whether this allocation proposal meets Commission requirements. Further, the cost pools to which U S West proposes to apply this ratio appear to contain expenses that are not caused by, or necessarily incurred in proportion to, traffic volumes.[125] In its revised manual, U S West must state, with regard to each account in which it incurs protocol processing expense, why its proposed method for allocating protocol processing expenses meets Commission requirements.

H. Accounts to be Added

77. The *Joint Cost Order* required that carriers submit allocation proposals for each USOA account and subaccount.[126] Since that requirement would have mandated the allocation of amounts that are not used in the jurisdictional separations and interstate ratemaking processes, the *Automated Reporting Requirements Order* eliminated the allocation requirement for particular accounts. Appendix C to that *Order* listed for the first time the particular USOA accounts and subaccounts that would be subject to joint cost reporting.[127] In addition, six accounts used in the interstate ratemaking process must be added to the list. These additional accounts are: Account 1439 (Deferred charges), Account 2004 (Telecommunication plant under construction-long term), Account 4120 (Other accrued liabilities), Account 4360 (Other deferred credits), Account 5050 (Customer premises revenue), and Account 7150 (Gains and losses from disposition of land and artworks).

78. Because the list released in the *Automated Reporting Requirements* proceeding was not available until after U S West filed its manual, the manual omits several accounts contained on that list. The manual also omits two of the six accounts that are being added to the list. We direct U S West to amend its manual to include allocation proposals for each of the omitted accounts. They are Accounts 1130 through 1160, 2425, 3100, 4040, 4120, 4360, 6425, 6790, 7510, 7530, and 7540.[128]

I. Specific Accounts

Account 1220 - Material and Supplies

79. For this account, U S West has created cost pools for "Nonmetallic Fiber Cable Materials" and "Metallic and Other Cable Materials," among other pools. U S West proposes to allocate these cost pools between regulated and nonregulated activities based on the allocation of its respective non-metallic and metallic cable company subaccounts in Accounts 2421 through 2426.[129] U S West, however, has proposed no cost pools in Accounts 2421 through 2426 corresponding to these company subaccounts. In its revised manual, U S West must either create such cost pools in Accounts 2421 through 2426 or propose new allocation methods for its "Nonmetallic Fiber Cable Materials" and "Metallic and Other Cable Materials" cost pools in Account 1200.

80. U S West also has created a cost pool for "Station Connections Material" in Account 1220. U S West proposes to allocate this cost pool based on its analysis of specific entries to the corresponding company subaccount.[130] We have already directed U S West to explain the nature and scope of this analysis. [131] In the course of that explanation, U S West shall describe the contents of this cost pool.[132]

Account 1439 - Deferred Charges and Account 4120 - Other Accrued Liabilities

81. U S West proposes no allocation methods for these accounts other than a "Deferred Charges - Equal Access" cost pool for Account 1439. In its revised manual, U S West shall create several additional cost pools for Account 1439. These cost pools shall be for deferred charges related to compensated absences and other deferred charges. Similarly, when U S West amends its manual to provide for Account 4120, it shall create a cost pool for liabilities related to compensated absences.

Account 2002 - Property Held for Future Telecommunicaitons Use and Account 2003 - Telecommunications Plant under Construction - Short Term

82. For each of these accounts, U S West provides only one cost pool that would be "categorized" to a plant account by a "periodic analysis" and allocated based on the regulated and nonregulated distribution of the related plant accounts. We believe that U S West can directly assign a significant portion of this investment to regulated or nonregulated operations based on the intended use of the investments. Any shared or common costs could then be allocated in proportion to the corresponding plant investment accounts. U S West is directed to amend its manual accordingly.

Account 2111 - Land

83. U S West proposes one cost pool for this account, which it intends to "categorize[ ] to sub-cost pools and assign[ ] on the same basis as" Account 2121 (Buildings).[133] We believe there would be less room for misinterpretation of the manual if it were to list separate cost pools for each of the "sub-cost pools" U S West states it is creating. S West shall amend its manual accordingly.

Account 2112 - Motor Vehicles

84. U S West has created a cost pool for vehicles having a "gross vehicle weight (GVW) of 6500 pounds or less except passenger cars." U S West proposes to allocate this cost pool between regulated and nonregulated activities "based on [the] prior month's Plant Operations expense, Accounts 6112 through 6540."[134] Colorado objects to this proposal. Colorado contends that maintenance and service personnel are the primary users of these vehicles and that U S West should use time reporting to allocate this investment.[135] In its response, U S West states that the method Colorado proposes may be more precise than the method U S West proposes, and U S West agrees to consider it in future revisions to its manual. However, U S West expresses concern that Colorado's method may not produce ratepayer benefits sufficient to justify the cost of acquiring additional allocation data. Accordingly, U S West asserts that it should not be required to adopt Colorado's proposal.[136]

85. We share U S West's concerns for ratepayer interests and for minimizing the burdens of the cost allocation process, but we cannot delegate to U S West our responsibility for balancing those concerns. We are not convinced that the allocation method selected by U S West

for this account will produce reasonable results, although for reasons other than those cited by Colorado. If the vehicles contained in this pool are used to support activities other than plant operations, an allocation based on plant operations expense is incorrect. In revisions to its manual, U S West must state why its proposed allocator would produce reasonable results for this cost pool. For the present, we decline to adopt Colorado's suggestion. We shall, however, monitor U S West's cost allocation results for this account and may require a different methodology in the future.

86. U S West has also created a cost pool for passenger cars in this account. This cost pool, according to the manual, would be allocated between regulated and nonregulated activities "based on [the] prior month's total wages and salaries in U S West's expense accounts."[137] Since certain employee groups, such as its sales groups, may use passenger cars more than other groups, we believe that U S West's proposal may not be sufficiently cost causative. In its revised manual, U S West shall either propose an allocation method for this cost pool that is based on its employees' proportionate use of passenger cars or show why such a method should not be mandated.

Account 2113 - Aircraft

87. We have already discussed U S West's proposal for its fixed wing aircraft cost pool in this account.[138] U S West must develop a method for directly assigning, directly attributing, or indirectly attributing all, or a portion, of the costs in this pool to regulated and nonregulated activities. To ensure that we can evaluate the proposal U S West submits for this cost pool, we direct U S West to describe, in its revised manual, the records it maintains in relation to the usage of fixed winged aircraft. If these records do not reflect the purpose of each flight and the employee or employee groups for which each flight is performed, the revised manual shall also show the costs U S West would incur in maintaining such records. Finally, in its revised manual, U S West shall either propose an allocation method for this cost pool that reflects such records or show why such a method should not be mandated.

Account 2121 - Buildings

88. In this account, U S West proposes to assign its cost pool for "Space Rented to Others" directly to regulated activities. We are uncertain whether the rental activities reflected in this cost pool are encompassed within the real estate leasing operations that U S West is proposing to treat as an incidental activity.[139] U S West must clarify this matter in its revised manual.

Account 2124 - General Purpose Computers and Account 6124 - General Purpose Computers Expense

89. U S West proposes six cost pools for each of these accounts. Each group of cost pools include pools for "Leased to AT&T" and "Marketing and Customer Services." Account 2124 also has cost pools for "Support and Administration, Local Plant," "Support and Administration, COE," "Overall Support of Telcom Equipment," and "All Other." In Account 6124, the remaining cost pools are for "COE Related," "Terminal Equipment Related," "Cable and Wire Related," and "Corporate and Other Expenses."

90. We believe that cost causation principles generally require that cost pools for investment and expense accounts reflect the corresponding account. One obvious method of accomplishing this is to create parallel cost pools. It appears that U S West may have intended to create such cost pools for these accounts. U S West must clarify this matter in its revised manual. If the cost pools are not parallel cost pools, the revised manual shall explain why the cost pool structures are inconsistent.

Account 2311 - Station Apparatus

91. U S West directly assigns the investment in this account to its regulated and nonregulated operations. However, the accounting treatment of station apparatus is extremely complex due to the Commission's various decisions in its *Computer II Implementation* proceeding,[140] the *BOC CPE Relief Order*, [141] and the various options open to carriers in the provision of station apparatus as a result of these decisions. S West is therefore required to explain in a comment section to its cost table what it will be including in this account for station apparatus, and to distinguish the investment that will be directly assigned to regulated from that which will be directly assigned to nonregulated operations.

Account 2681 - Capital Leases

92. U S West proposes to apportion this account into cost pools for buildings, motor vehicles, computers, and other capital leases. The first three of these cost pools would be allocated between regulated and nonregulated activities using the same methodology U S West proposes for Account 2121 (Buildings), Account 2112 (Motor vehicles), and Account 2124 (General purpose computers), respectively. U S West has created no cost pools in these accounts for direct assignment to nonregulated activities. The other capital lease cost pool would, according to the manual, be "categorized to plant accounts through a periodic study of the leases which are capitalized to this [cost pool]" and then allocated between regulated and nonregulated activities based on these plant accounts.[142]

93. U S West has made no effort to assign the costs in this account directly to regulated and nonregulated activities. We therefore direct U S West to amend its manual to provide for direct assignment cost pools for its capital leases. U S West may employ its proposed methodology for those of its capital leases that cannot be directly assigned to regulated or nonregulated activities.

Account 2682 - Leasehold Improvements

94. U S West indicates that it will allocate the costs in its "Buildings" cost pool in this account in the same proportion as the related investment in Account 2121 (Buildings). This methodology does not appear to present a reasonable allocator because improvements made to leasehold property may have little to do with the relative use of the buildings U S West owns. Therefore, we require U S West to allocate this account on a more cost causative basis, such as an individual analysis of its leasehold improvements. U S West shall amend its manual accordingly.

Account 3100 - Accumulated Depreciation

95. U S West fails to list this account in its cost table. The table, however, does list what appear to be depreciation-related cost pools for general support assets, central office assets, information originationtermination as-

sets, and cable and wire facilities assets. These cost pools apparently correspond to company accounts 3121, 3122, 3123, 3124, respectively. When U S West submits its proposal for Account 3100 in its revised manual,[143] it shall state whether these four company accounts are cost pools under Account 3100. U S West is further directed to adhere to the Commission's requirement that the depreciation reserve be allocated at the USOA account level.[144]

Accounts 4100 - Net Current Deferred Operating Income Taxes and Account 4340 - Net Noncurrent Deferred Operating Income Taxes

96. U S West proposes one cost pool for each of these accounts. The cost pool in Account 4100 is for "Non-property Related Taxes" and according to the manual, would be allocated on the "same . . . bases as the non- property related subaccounts of Account 7250, Provision for Deferred Operating Taxes-Net."[145] The cost pool in Account 4340 is for "Net Noncurrent Deferred Operating Income Taxes" and would be allocated on the "same . . . bases as the equivalent subaccounts of Account 7250, Provision for Deferred Operating Income Taxes-Net."[146]

97. Colorado objects to these proposals. Colorado indicates that since Accounts 4100 and 4340 reflect the cumulative impact of book and tax timing differences over prior periods, it is inappropriate to allocate them based on Account 7250, which reflects the impact of book and tax timing differences in the current period. Colorado suggests that U S West should be required to allocate its deferred operating income tax balances based on the vintage of the plant originally necessitating the deferred tax provision.[147]

98. U S West states that while Colorado's approach would, in theory, improve the accuracy of the allocation, the costs of maintaining vintage years of plant for regulated and nonregulated activities would far outweigh the possible ratepayer benefits to be gained by such a process. Therefore, U S West states that it should not be required to implement Colorado's suggestion.[148]

99. We are not satisfied with U S West's treatment of Accounts 4100 and 4300. First, U S West has proposed only one cost pool for each of these accounts. We direct U S West to explain why it has not created property-related cost pools for these accounts. Second, we share Colorado's concern that U S West's proposal may not reflect cost causation principles, but we are unable to determine whether the benefits of allocating deferred operating income taxes by plant vintage would outweigh the increased burden on U S West and whether any less burdensome method might yield comparable results for these accounts. To help us evaluate this matter, we direct U S West to state, in its revised manual, the steps it would have to take to implement Colorado's proposal. The revised manual should also state whether an alternative method, such as allocating deferred operating income taxes in proportion to the corresponding plant in service accounts, might yield accurate results without unduly burdening U S West.

Account 4320 - Unamortized Operating Investment Tax Credits - Net and Account 7210 - Operating Investment Tax Credits - Net

100. U S West has created one cost pool for each of these accounts, which would be assigned to regulated and nonregulated activities based on related telecommunications plant in service accounts. U S West states that the pools would be categorized by plant account through a tax department study.

101. Colorado suggests, in relation to U S West's proposal for Account 4320, that the manual should include a methodology for allocating unamortized investment tax credits (ITCs) between regulated and nonregulated activities based upon the associated plant or property that gave rise to the tax credit. In addition, Colorado states that the manual should "distinguish between pre-1986 plus transition property and post-1985 property since the same type of facility placed into service after January 1, 1986 will not be allowed a similar tax credit as a facility placed into service pre-1986."[149] Colorado claims that the proper allocation of ITCs requires the identification of the vintage of the plant giving rise to the tax credits.[150] In its response, U S West indicates that while its tax department study addresses the impact of the specific property and vintages that cause ITCs, the data is kept on a total plant basis. U S West states that it would not be cost effective for it to keep this data on a regulated and nonregulated investment basis, and that it should not be required to implement Colorado's suggestion.[151]

102. Account 4320 is used in conjunction with Account 7210 to reflect ITCs generated from qualified expenditures related to regulated operations when the carrier defers the recognition of the ITCs for book purposes. Since Account 7210, rather than Account 4320, is used in the calculation of interstate rates, we have not required carriers to include allocation methods for Account 4320 in their manuals.[152] Therefore, we do not require U S West to amend its proposal for that account.

103. With regard to Account 7210, however, we believe that U S West must provide additional details as to the nature and scope of its tax department studies as well as the frequency of the studies before we can properly evaluate Colorado's suggestion that ITCs should be allocated based on plant vintage. We direct U S West to provide this additional information in its revised manual.

Account 5301 - Uncollectible Revenue - Telecommunications and Account 5302 - Uncollectible Revenue - Other

104. In its manual, U S West proposes to combine these two accounts into single cost pool for "Uncollectible Revenue-Regulated," which would be directly assigned to regulated activities. Since it is inherently unlikely that U S West will be able to collect all revenue due it from its nonregulated activities and since a cost allocation manual should match uncollectible revenues with the activities that caused them, we direct U S West to allocate Account 5301 in proportion to relative telecommunications revenue and Account 5300 in proportion to relative non-telecommunications revenues. U S West shall amend its manual accordingly.

Account 6534 - Plant Operations Administration Expense and Account 6535 - Engineering Expense

105. U S West has created one cost pool for each of these accounts, that would be allocated between regulated and nonregulated activities based on specific plant operations expense accounts. Since plant operations administration and engineering expenses are recorded in Accounts 6534 and 6535 before being cleared to construc-

tion accounts, U S West must specify in its revised manual that it will clear those expenses before performing its cost allocation operations.

Account 6561 - Depreciation Expenses - Telecoommunications Plant in Service

106. U S West establishes two cost pools for this account. The first represents network plant investment and would be "assigned based on the associated investment." The second cost pool is for "Supplemental Station InstallationMain Line Inside Wire Installations." U S West proposes to assign this cost pool directly to regulated activities.

107. We are not satisfied that the depreciation expense for network plant will be apportioned in accordance with Commission requirements. Consistent with the Commission's directives for the allocation of the depreciation reserve,[153] we require U S West to disaggregate depreciation expense to a level reflecting individual plant accounts. With regard to U S West's second cost pool for this account, carriers are permitted to amortize to Account 6561 the inside wiring costs that they had properly capitalized prior to the deregulation of inside wiring installation and maintenance.[154] In its revised manual, U S West must state the contents of this cost pool to enable us to determine whether it should be directly assigned to regulated activities.

Account 6611 - Product Management Expense

108. U S West has created several cost pools for this account. One pool, "Rate and Tariff Development," would be allocated based on the "general marketing allocator." We fail to understand why regulated costs would be allocated based on a marketing allocator. U S West is required to amend its manual to assign this cost pool directly to regulated activities.

Account 6612 - Sales Expense

109. U S West proposes to use its functional accounting codes to apportion this account into eleven cost pools. We have been unable to determine the content of these cost pools from the descriptions provided in the manual.[155] In its revised manual, U S West shall describe the content of each of these cost pools. In the course of those descriptions, U S West shall state whether the "Public Services" cost pool is composed of sales expenses related to pay telephones.

Account 6623 - Customer Services

110. U S West proposes twenty-two cost pools for Account 6623 and variety of methods to allocate these cost pools between regulated and nonregulated activities. Colorado suggests that, to the extent feasible, U S West should use its time reporting system to assign the expenses in Account 6623 directly to regulated and nonregulated activities. In particular, Colorado challenges U S West's proposal to apply its marketing allocator to the "Customer Services - Instruction and Advice" cost pool it has proposed for this account. Colorado states that since nonregulated services are generally more sophisticated than regulated services, it is probable that the nonregulated services will require more interaction between the operating companies and customers. Colorado claims that U S West's method would underallocate customer services expenses to nonregulated activities. Colorado states that the direct assignment of these expenses would alleviate this problem.[156]

111. In its response, U S West states that it considered directly assigning its customer services expenses based on specific time reporting when it prepared its proposal for Account 6623. U S West asserts that it determined at that time "further breakdowns of these cost pools would require such small increments of time that they could not be time reported in any useful way, and could diminish accuracy if they were broken down further."[157]

112. We agree that U S West should directly assign or attribute its customer services expenses when it would not unduly burden the carrier. Since we cannot delegate to U S West our responsibility for determining whether its manual properly reflects Commission requirements, we direct U S West to state in its revised manual its basis for determining that direct time reporting of its customer services expenses would not improve the accuracy of cost allocation results. In considering its proposed allocation of these costs, U S West should consider expanding its time reporting mechanisms to include time and motion studies that would facilitate direct time reporting of functions such as customer services. In its revisions to the manual, U S West shall also explain why it is unable to apportion *any* of its customer services expenses to cost pools that would be directly assigned to nonregulated activities, when it is proposing to apportion its "Other Operations-Regulated," "Public Services," "Toll and Local Message Processing," and "Carrier Access Billing" expenses to cost pools that would be directly assigned to regulated activities. This statement shall also describe the criteria U S West employed in deciding to apportion this account into twenty- two cost pools.[158]

Account 6711 - Executive, 6712 - Planning, 6721 - Accounting and Finance, and Account 6722 - External Relations Expenses

113. U S West proposes to allocate Account 6711 based on the general allocator. Account 6712 would be divided into two cost pools, one of which would be allocated using the general allocator. Account 6721 would also be allocated using the general allocator. For Account 6722, U S West proposes to create a cost pool for marketing expenses, which would be allocated using the marketing allocator, and a cost pool for non-marketing expenses, which would be allocated using the general allocator. We believe that many of these expenses can be directly assigned or attributed to regulated and nonregulated activities. In its revised manual, U S West shall either provide for such assignment or attribution, or explain why they should not be required.

Account 6725 - Legal Expenses

114. U S West proposes to apportion this account into "Regulated," "Nonregulated," and "Common" legal expense cast pools. The first two cost pools would be for expenses that can be directly assigned to regulated and nonregulated activities. The third cost pool would be for those legal expenses that cannot be directly assigned. These "Common" legal expenses apparently include both direct legal expense and overhead, such as law library and general research costs. Since the overhead the U S West activities for which direct legal expenses are incurred, U S West shall divide its "Common legal expense cost pool into a "common" expense cost pool and an overhead cost

pool. U S West shall allocate the overhead cost pool in the same proportion as its direct and "Common" legal expenses are allocated.

Account 6726 - Procurement

115. U S West proposes one cost pool for this account, which would be allocated between regulated and nonregulated activities "based on total expenses in [Accounts 6110 - 6790], less wages and salaries."[159] This proposal is insufficiently cost causative. In its revised manual, U S West shall apportion Account 6726 into homogeneous cost pools that can be directly assigned to, or allocated between, regulated and nonregulated activities.[160]

Account 6728 - Other General and Administration Expense

116. *Damaged Claim Payments*. U S West proposes to apply the general allocator to nine of fourteen cost pools it has created in this account. One of the cost pools is for "Damage Claim Payments" and would be allocated based on the general allocator. Colorado questions this use of the general allocator. Colorado argues that damage claim payments caused by particular regulated and nonregulated activities should be attributed in proportion to the regulated and nonregulated activities that give rise to their payment. Colorado maintains other damage claim payments should be allocated in proportion to the allocation of the associated plant accounts.[161]

117. In its response, U S West contends that it should not be required to attribute damage claim payments based on specific claims. According to U S West, such an approach would require investigation of "the regulatednonregulated basis of claims . . . on a case by case basis."[162] U S West asserts that the possible increase in accuracy would not justify such an investigation, particularly since many types of damage would assertedly require a "high level" allocator such as the general allocator.[163]

118. We believe that U S West, or its agents, investigate each damage claim for which a payment is made prior to the making of the payment and that the investigation invariably reveals the type of activity giving rise to the claim. In its explanation of its proposal to apply the general allocator to this cost pool, U S West shall state why the results of these investigations cannot be used to assign its damage payment expenses directly to regulated and nonregulated activities.

119. *Insurance*. U S West also proposes to apply the general allocator to its "Insurance" cost pool in Account 6728. Colorado also objects to this proposal. Colorado claims that these expenses should be allocated in proportion to the associated plant accounts.[164] In its reply, U S West takes no position on Colorado's suggestion. However, U S West states that it is largely self-insured and, therefore, most of its insurance expense is not property-related.[165]

120. Since the general allocator reflects all expenses from shared activities, including property-related expenses, the general allocator would be a particularly inappropriate allocator for an insurance cost pool that included only minimal property-related expense. Therefore, U S West is directed to amend its manual to provide a different allocator for its insurance cost pool. In amending its manual, U S West is required to explain how its allocator reflects its practice of self-insuring. In order to evaluate this information, U S West must reveal the scope of its self-insurance. This information shall be presented as part of U S West's showing with regard to the use of the general allocator for this cost pool.

121. *Corporate Benefit Payments*. U S West also proposes a "Corporate Benefit Payment - Active Employees" cost pool in Account 6728. This cost pool would be allocated between regulated and nonregulated activities based on the prior month's wages and salaries in U S West's expense accounts. In its comments, Colorado states that U S West maintains separate pension plans for its management and its nonmanagement employees. Colorado argues, in effect, that U S West should create a separate cost pool for the corporate benefit payments associated with each of these plans. These pools would then be allocated in proportion to the respective wages and salaries associated with each pool, according to Colorado.[166]

122. In its response, U S West argues that Colorado may have misunderstood the content of this cost pool. U S West states that the pool does not include pension or savings plan contributions, and that the expenses in this pool are not all identifiable on a management or nonmanagement basis. U S West indicates that apportioning the costs that cannot be identified on a management or nonmanagement basis into separate cost pools "would reduce or eliminate the increased accuracy of using separate wages and salaries" as the allocation factor.[167]

123. Because U S West has indicated that the costs in this corporate benefit payments cost pool are not significant, we will not require U S West to implement Colorado's proposal at this time. However, we intend to monitor the situation in relation to this cost pool. In the event the the amount in this cost pool becomes more significant, we will consider alternative allocation methods.

124. *Compensated Absences Amortization*. In its manual, U S West proposes to assign its compensated absenses cost pool in Account 6728 directly to regulated activities. Colorado disagrees with this proposal. Colorado argues that amortization expenses related to compensated absenses, like other labor overhead expenses, should be allocated in proportion to associated wages and salaries.[168] In its response, U S West states that it will modify its manual to incorporate the method Colorado proposes.[169] We concur in this change and direct U S West to amend its manual accordingly.

125. *Antitrust suits*. U S West also provides a cost pool for antitrust suits, that would be allocated based on analysis of the specific suits. We are concerned that these costs should be accounted for in Account 6725 (Legal). In revising its manual, U S West must justify the inclusion of these costs in this account.

Account 7220 - Operating Federal Income Tax, Account 7230 - Operating State and Local Income Taxes, and Account 7250 - Deferred Operating Income Taxes - Net

126. U S West has proposed one cost pool each for the first two accounts. The cost pool for operating federal income taxes is to be assigned based on federal taxable income, while the cost pool for operating state and local income taxes is to be assigned based on state taxable income. For Account 7250, U S West proposes eleven cost pools and assigns these cost pools to regulated and nonregulated using several assignment factors. Among the eleven cost pools, U S West has created separate pools for federal, state, and local reversing timing differences and

proposes to assign these pools to regulated and nonregulated activities on the same assignment basis as the equivalent subaccounts of Account 7250.1.

127. *Current Income Taxes.* Colorado suggests a clarification in the determination of current income taxes. Colorado states that operating income taxes should not be allocated but should be calculated based upon the revenues, expenses, and tax reconciling items that are allocated to regulated and deregulated activities. Colorado claims that this would ensure that income taxes reflect the expenses assigned to the respective activities. In addition, Colorado suggest that the definition of federal and state taxable income contained in U S West's manual be revised to include interest expense and all relevant booktax-timing differences properly included in the determination of U S West's federal, state, or local taxable income.[170]

128. U S West states that the *Joint Cost Order* explicitly provides for the allocation of amounts which are booked. U S West argues that the calculations suggested by Colorado would not necessarily equal the books of account. U S West also contends that since it allocated income tax on the basis of taxable income, it would seem that there would be no significant differences in using Colorado's method. Finally, U S West states that the revised definition of taxable income proposed by Colorado achieves no significant improvement in the accuracy of U S West's results since interest and tax timing amounts would also require allocation in order to be used for this calculation. U S West, however, states that it is willing to consider this approach when future methodological revisions are assessed.

129. Under the provisions of Part 32, carriers are required to account for income taxes on a normalized basis for all material timing differences. The effect of that requirement is to record income tax expenses in the books based on book income rather than taxable income. Thus, the net income tax expense for the period as recorded in Accounts 7220, 7230, and 7250 should reflect the income tax expense related to book income. We believe the resulting income tax expense in these three accounts for regulated and nonregulated operations after allocation should reflect relative income tax expense based on regulated and nonregulated book income.

130. At present, U S West has proposed different methods for allocating current income taxes in Accounts 7220 and 7230 and deferred taxes in Account 7250. Applying different apportionment bases to any one or group of these accounts than is applied to all three accounts could result in assignments of these costs that are not consistent with the related book income. Moreover, U S West's proposal to use taxable income to apportion Accounts 7220 and 7230 does not explain how the allocator, that is separable taxable income amounts for regulated and nonregulated activities, would be derived. If all three of these accounts are apportioned based on book income, the taxes apportioned should result in appropriate distribution between regulated and nonregulated activities.[171] We also believe that allocation of all three of these accounts based on the relative book income of regulated and nonregulated activities resolves Colorado's concern that the taxes be based on the revenues, expenses, and tax reconciling differences for regulated and nonregulated activities inasmuch as the effect of considering those elements would be to assign income tax expense based on book income. It also resolves Colorado's concern that interest expense should be considered in the income tax allocation. We direct U S West to amend its manual consistent with this *Order* or to demonstrate how its proposed method achieves the end we seek.

131. *Cost pools.* Colorado also comments on four of the cost pools in Account 7250. For the "other" cost pool, which is allocated by the general allocator, Colorado suggests that if the amounts in this cost pool are material, such amounts should be allocated according to the assignment of those items necessitating the provision of the associated deferred income taxes rather than using the general allocator.[172] U S West claims that the amounts involved are probably too small to have significant ratepayer impact. U S West states that a thorough analysis would show much of the amount to be a common expense, still requiring allocation. U S West contends that the benefits of Colorado's suggested approach are outweighed by the cost and therefore it should not be required to adopt the change.[173]

132. Colorado also argues that the three "timing differences" cost pools relate to the provision of deferred income taxes in prior periods, and that the reversing entries should not be assigned based upon the current provision for accumulated deferred income taxes. Colorado suggests that the cost pool should be assigned according to the plant vintages which were the source of the original timing differences in prior periods. Colorado states that the methodology proposed in U S West's manual appears to overallocate reversals of previously accumulated deferred income taxes to the most recently acquired plant.[174] U S West does not believe that it should be required to adopt Colorado's suggestion because it would produce no net ratepayer benefit. U S West claims that the tax study it conducts takes into consideration plant vintage when determining the allocation across total plant. U S West states that it does not appear to be cost effective to maintain vintage information for regulated and nonregulated investment, but U S West will consider this approach in future methodological revisions.[175]

133. As stated previously, we believe that the allocation of Accounts 7220, 7230, and 7250 based on book income should produce allocated income tax expenses that relate to book income, which is the intended result of normalized tax accounting. We have directed U S West to amend its manual to achieve that result which will resolve the concerns Colorado expressed relating to individual cost pools of Account 7250.

Account 7240 - Operating Other Taxes

134. U S West has proposed six cost pools for Account 7240. Three of these cost pools are assigned to regulated and nonregulated based on the general allocator. One of these is the "superfund" taxes cost pool. Colorado states that since superfund taxes are related to federal income taxes, these taxes should be assigned to regulated and nonregulated based upon the federal income taxes calculated for regulated and nonregulated, rather than rely on the general allocator.[176] U S West states that it concurs with Colorado on this point and plans to modify its manual prior to implementation to allocate superfund taxes on the same basis as federal income taxes.[177] We have no objection to the change proposed by Colorado and supported by U S West, and we direct U S West to amend its manual accordingly.

IV. PROCEDURAL ISSUES

135. In this section we address a number of procedural issues affecting the manual. These issues are: (a) the submission of revised manuals in compliance with this order; (b) interim reporting and retention requirements; and (c) the routine submission of future amendments to the manuals.

136. *Revised manuals*. We have required U S West to submit extensive amendments clarifying and changing many of its cost pool apportionment and cost allocation procedures. We have also directed U S West to submit additional information concerning its affiliate transactions, list of nonregulated activities, incidental activities, and time reporting mechanisms. In many cases, the additional information requested is needed to form a judgment concerning the reasonableness of U S West's proposed methods. In the *Joint Cost Order*, the Commission specifically provided for public comment on the manuals so that determination on their compliance with Commission requirements would be based on a full record.[178] Similarly, we believe that our review of U S West's amendments will be aided by public comment on the revision. Public comment on the revisions fulfills the *Joint Cost Order's* promise that the cost allocation methodologies would be exposed to public scrutiny prior to their implementation.

137. We will evaluate the proposed revisions, as well as the comments that we receive, before issuing an order approving or disapproving the amendments. If we disapprove a proposed revision, we shall take whatever further action is required, including mandating specific allocation methodologies or other procedures, consistent with our delegated authority to implement the manuals. All revisions that are approved or ordered shall be made retroactive to January 1, 1988. In addition, to facilitate our handling of manuals and the availability of updated manuals to the public, S West must file two updated copies of its revised manual with the Commission in looseleaf form with numbered and dated pages, within 60 days of the release date of this Order.[179] When amendments are submitted, each revised page must clearly indicate the word "REVISED" and the date next to the page number. All amended language must be indicated by a verticle line in the right margin of the page.

138. *Interim reporting and record retention*. The *Joint Cost Order* directed us to develop interim reporting and record retention requirements, pending the final resolution of these issues in the *Automated Reporting Requirements* docket.[180] In that proceeding, the Commission delegated to us the authority to determine the parameters of the data to be filed concerning the separation of joint and common costs.[181] The Commission also specified that the first report containing the results of the implementation of the cost manuals would be filed on June 1, 1988, covering the period of January 1, 1988 to March 31, 1988. The Commission directed us to finalize our reporting standards prior to that date. Given that reporting will begin five months after the implementation of this manual, we decline to issue interim reporting formats. We believe our resources are better devoted to assuring that the permanent reporting requirements, scheduled to become effective on June 1, 1988, are properly designed and implemented. Moreover, although we will have to wait five months to see the first set of results from the companies, any misallocations that may be detected can be corrected at that time.

139. We require that carriers on an interim basis retain all of their accounting records together with any calculations necessary to perform cost allocations, that will be necessary to report cost allocations to the Commission. For the interim, records must be maintained at a cost pool level.

140. *Routine amendments*. In addition to reporting and recordkeeping requirements, the larger issue of the procedures the companies shall be required to follow when updating their cost allocation manuals must be addressed. In determining how frequently updates to cost manuals should be submitted, we recognize that the accuracy of different sections of the manual will have different effects on our ability to monitor the cost allocation process. For example, it is very important for the Commission to obtain current information on the cost categories and how these are allocated between regulated and nonregulated activities. Other information, such as corporate structure, may not be quite as critical for cost allocation monitoring purposes. Furthermore, some of the information required is intended for our informational purposes so that we understand the carriers' activities, while other information in the manuals must be reviewed prior to implementation.

141. Based on an analysis of these factors, we have decided to adopt the following requirements for the update of U S West's manual.[182] First, several categories of information require our attention before the manual is implemented. These are: (1) changes to the cost categories and their allocation mechanisms; and (2) a change in the way employee time, including nonproductive time, is allocated. Each of these changes in the cost manuals must be submitted at least 60 days prior to implementation. Parties seeking to comment on the proposed amendments will be provided an opportunity to do so prior to implementation and will be notified by public notice of the comment dates. The proposed amendments to the manual will be deemed accepted unless the Common Carrier Bureau, pursuant to its delegated authority, stays the effectiveness of the change or rejects the change.[183]

142. Second, we will require that U S West file any changes to its corporate structure in a timely manner.[184] A modification to a carrier's cost manual to reflect a corporate reorganization does not require our advance approval and therefore, does not need to be filed prior to the corporate restructuring. Finally, all other changes to the manual should be submitted quarterly, on March 31, June 30, September 30 and December 31 of each year.

143. We believe that these procedures will ensure that the ongoing process of implementing cost allocations will continue to be conducted according to the requirements set forth in the *Joint Cost Order*. At the same time, it also minimizes the number of times U S West must seek prior Commission approval before implementing a change and provides a system which requires Commission action within a relatively short time frame.

V. ORDERING CLAUSES

144. ACCORDINGLY, IT IS ORDERED that the Cost Allocation Manual filed by U S West, File Number AAD 7-1693, IS APPROVED, subject to the conditions stated in this Order.

145. IT IS FURTHER ORDERED that this Order shall become effective January 1, 1988.

146. IT IS FURTHER ORDERED that revised copies of the Cost Allocation Manual should be submitted within 60 days from the release date of this Order.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities, *Report and Order*, CC Docket 86-111, 2 FCC Rcd 1298 (1987)(*Joint Cost Order*), *modified on recon.*, 2 FCC Rcd 6283 (1987) (*Reconsideration Order*).

[2] This *Order* will refer to the Mountain States Telephone and Telegraph Company (Mountain States), Northwestern Bell Telephone Company (Northwestern Bell), and Pacific Northwest Bell Telephone Company (Pacific Northwest) as the U S West's telephone operating companies. Two additional U S West affiliates, Malheur Home Telephone Company (Malheur) and El Paso Telephone Company (El Paso) are also telephone operating companies that are subject to the Commission's cost allocation and affiliate transaction rules.

[3] Malheur and El Paso are not Tier 1 telephone companies and thus are not subject to this filing requirement.

[4] 51 Fed. Reg. 43498 (Dec. 2, 1986), *to be codified at* 47 C.F.R. Part 32.

[5] *Joint Cost Order*, 2 FCC Rcd at 1327-28, paras. 230-35.

[6] *See generally id.* at 1328, para. 235.

[7] The commenting parties are the Colorado Office of Consumer Counsel (Colorado), the Iowa Department of Justice (Iowa), the Office of the Attorney General for the State of Minnesota (Minnesota), the International Business Machines Corporation (IBM), MCI Telecommunications Corporation (MCI), and the Western Union Telegraph Company (Western Union).

[8] Pursuant to the *Joint Cost Order*, the Commission originally contemplated addressing the permanent, "or Part 32," manuals by Bureau *Orders* only if the permanent manuals differed materially from the interim, or "Part 31," manuals that the Bell Operating Companies (BOCs) were invited to file. *Joint Cost Order*, 2 FCC Rcd at 1328, para. 235. Because the interim manuals remain pending, we are issuing separate orders for the BOCs' permanent manuals.

[9] *See* para. 2, *supra*.

[10] MCI Comments at 2-7.

[11] U S West Reply at 5-6.

[12] *Joint Cost Order* at 1318-19, para. 240. The *Joint Cost Order* uses the term "cost categories" to refer to groupings of costs that are homogeneous in nature for cost allocation purposes. The accounting profession's term for "cost categories" is "cost pools." This *Order* will use the two terms interchangeably.

[13] *Id.* at 1319, paras. 165-65.

[14] *Id.* at 1319, para. 165.

[15] *Id.* at 1317-18, paras. 147-60.

[16] If the additional material we are requesting does not permit us to evaluate U S West's methods for selecting cost pools, apportioning costs into cost pools, and allocating cost pools to regulated and nonregulated activities, we may, rather than reject the revisions, order U S West to adopt methods of our own choosing, pursuant to our delegated authority to ensure that the manual is implemented according to Commission requirements.

[17] *Joint Cost Order*, 2 FCC Rcd at 1328, para. 240.

[18] Colorado Comments at 7-11; Iowa Comments at 1; Minnesota Comments at 1.

[19] Colorado Comments at 7-11.

[20] U S West Reply at 8-9.

[21] *Joint Cost Order*, 2 FCC Rcd at 1308, paras. 73-76.

[22] Colorado Comments at 13-14.

[23] U S West Reply at 12-13.

[24] Second Computer Inquiry, *Final Decision*, 77 FCC 2d 384 (*Computer II Final Decision*), *modified on reconsideration*, 84 FCC 2d 50 (1980)(*Computer II Reconsideration Order*), *modified on further reconsideration*, 88 FCC 2d 512 (1981), *aff'd sub nom.* Computer and Communications Indus. Ass'n v. FCC, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied*, 461 U.S. 938 (1983), *aff'd on second further reconsideration*, FCC 84-190 (released May 4, 1984).

[25] *Joint Cost Order*, 2 FCC Rcd at 1318, para. 161.

[26] U S West Manual at 3-6.

[27] *Id.* at 3.

[28] *Joint Cost Order*, 2 FCC Rcd at 1308, 1328, paras. 77-78, 240.

[29] Colorado Comments at 2-4.

[30] *See Joint Cost Order*, 2 FCC Rcd at 1308, paras. 76-78.

[31] *See id.* at 1308, paras. 77-78.

[32] *See Joint Cost Order*, 2 FCC Rcd at 1308, paras. 76-78. The two exceptions to this general rule are loop-back testing and multiplexing. *See Computer III* (Phase II) 2 FCC Rcd 3072, 3105-06, paras. 231-37 (1987).

[33] *Joint Cost Order*, 2 FCC Rcd at 1335, paras. 290-92; *Reconsideration Order*, 2 FCC Rcd at 6295, para. 109.

[34] *Joint Cost Order*, 2 FCC Rcd at 1345, *as amended by Reconsideration Order*, at 6308-09, *to be codified at* 47 C.F.R. Sec. 32.27.

[35] *Joint Cost Order*, 2 FCC Rcd at 1343, *as amended by Reconsideration Order* at 6308, *to be codified at* 47 C.F.R. Sec. 64.901. Paragraphs 32-34, *infra*, expand upon this discussion of affiliate transactions involving the provision of services.

[36] *Joint Cost Order*, 2 FCC Rcd at 1328, para. 240.

[37] *Ameritech Permanent Cost Allocation Manual Order*, DA87-1886, adopted December 28, 1987 at paras. 11-14.

[38] Colorado Comments at 6.

[39] U S West Reply at 4-5.

[40] U S West Manual at 11-17.

[41] Colorado Comments at 4-7.

[42] U S West Reply at 3-4.

[43] *Id.* at 4.

[44] *Id.* at 3-4.

[45] *Joint Cost Order*, 2 FCC Rcd at 1343, 1345, *to be codified at* 47 C.F.R. Secs. 32.27(d); 64.901(b)(1).

[46] *Joint Cost Order*, 2 FCC Rcd at 1336, para. 299.

[47] *E. g.*, U S West Manual at 12 (proposal to provide "Utilization of network facilities, e.g. voice, data, etc." at fully allocated costs).

[48] *Joint Cost Order*, 2 FCC Rcd at 1345, *to be codified at* 47 C.F.R. Sec. 32.27(d).

[49] *See* text accompanying note 43, *supra*.

[50] *Joint Cost Order*, FCC Rcd at 1345, *to be codified at* 47 C.F.R. Sec 2.27(d).

[51] *Joint Cost Order*, 2 FCC Rcd at 1328, para. 240.

[52] U S West Manual at 11, 15 (emphasis added).

[53] Colorado Comments at 5.

[54] U S West Reply at 4.

[55] *Id.*

[56] Colorado Comments at 5.

[57] *See id.*

[58] U S West Reply at 4.

[59] *Joint Cost Order*, 2 FCC Rcd at 1321-22, paras. 182-87.

[60] U S West Manual at 56.

[61] *Id.*

[62] *Id.* at 58.

[63] *Id.* at 59.

[64] Colorado Comments at 11-12.

[65] U S West Reply at 9.

[66] *Id.* at 10.

[67] U S West Manual at 57.

[68] *Id.* at 56.

[69] These company subaccounts are in addition to those prescribed in the USOA.

[70] U S West Manual at 18.

[71] *E. g.*, Account 2112 (Motor vehicles).

[72] *E.* g., Account 2113 (Aircraft).

[73] E.g., Account 2121 (Buildings).

[74] E.g., Account 2124 (General purpose computers).

[75] E.g., Account 6124 (General purpose computers expense).

[76] U S West Manual at 18.

[77] See paras. 5-10, supra.

[78] Joint Cost Order, 2 FCC Rcd at 1318-19, para. 161; Reconsideration Order, 2 FCC Rcd at 6288, paras. 40-46.

[79] U S West refers to these pools as "sub-cost pools." U S West Manual at 18-19.

[80] Id.

[81] Id. at 19.

[82] Id.

[83] Id.

[84] Western Union Comments at 1-4.

[85] U S West Reply at 7.

[86] Id. at 8-9.

[87] E.g., U S West Manual at 24 ("other" cost pool to Account 1220 (Material and supplies)).

[88] E.g., Account 2115 (Garage work equipment).

[89] E.g., Account 2002 (Property held for future telecommunications use).

[90] E.g. U S West Manual at 33.

[91] E.g., Id. at 47 ("Service and Equipment Processing" cost pool to Account 6623).

[92] E.g. id. at 52 ("Federal Reversing Timing Differences" cost pool to Account 7250).

[93] Jo int Cost Ord er, 2 FCC Rcd at 1318, para. 156.

[94] Id., para. 161.

[95] U S West Manual at 19.

[96] Colorado Comments at 12-13.

[97] U S West Reply at 11.

[98] Joint Cost Order, 2 FCC Rcd at 1346, to be codified at 47 C.F.R. Sec. 32.7990.

[99] E.g., U S West Manual at 32 ("Trademarks" cost pool in Account 2690).

[100] U S West Manual at 20.

[101] U S West Manual at 18.

[102] See paras. 76-77, supra.

[103] See paras. 47-48, supra.

[104] U S West Manual at 26.

[105] Id.

[106] Joint Cost Order, 2 FCC Rcd at 1319-20, para. 168.

[107] U S West Manual at 19.

[108] Id. at 4.

[109] IBM Comments at 2-7.

[110] Reconsideration Order, 2 FCC Rcd at 6288, paras. 43-44.

[111] Id., para. 45.

[112] See U S West Reply at 19.

[113] U S West Manual at 21.

[114] 2 FCC Rcd at 1317, para. 151.

[115] Id. at 1319-20, para. 168; Reconsideration Order, 2 FCC Rcd at 6288, para. 45.

[116] See paras. 52-57, supra, and 70-75, infra.

[117] Statements regarding the inapplicability of the projection requirements to U S West's usage of central office equipment and outside plant for nonregulated activites do not meet the waiver criteria.

[118] U S West Manual at 21.

[119] Id.

[120] Id. at 21-22, 28.

[121] See para. 69, supra.

[122] U S West Manual at 37, 41.

[123] See Joint Cost Order, 2 FCC Rcd at 1320, para. 173.

[124] U S West Manual at 22.

[125] See, e.g., Account 6623 (Customer service)(proposal to allocate service order processing expenses based on relative traffic volumes).

[126] Joint Cost Order, 2 FCC Rcd at 1328, para. 240.

[127] Automated Reporting Requirements Order, 2 FCC Rcd 5770, at Appendix C (1987).

[128] In amending its manual, U S West must list all accounts required here or pursuant to the Automated Reporting Requirements proceeding. If it has no cost or revenue in an account, it should indicate that fact in its cost allocation table.

[129] U S West Manual at 23.

[130] Id.

[131] See para. 50, supra.

[132] See Detariffing the Installation and Maintenance of Inside Wiring, 51 Fed. Reg. 8498 (Mar. 12, 1986), recon. in part, 1 FCC Rcd 1190 (1986), petition for further recon. pending, petition for review docketed sub nom. NARUC v. FCC, Case No. 86-1687 (D.C. Cir. Dec. 11, 1986).

[133] U S West Manual at 25.

[134] Id.

[135] Colorado Comments at 14.

[136] U S West Reply at 13.

[137] U S West Manual at 26.

[138] See para. 64 supra.

[139] Compare U S West Manual at 7 with id. at 27.

[140] Procedures for Implementing the Detariffing of Customer Premises Equipment, CC Docket No. 81-893, 95 FCC 2d 1276 (1983) (detariffing AT&T's embedded CPE), modified on reconsi-

deration, 50 Fed. Reg. 9016 (1985); Second Report and Order, 98 FCC 2d 814 (1984) (detariffing of mobile CPE); Third Report and Order, 99 FCC 2d 354 (1984) (detariffing the independent local exchange carriers, state-tariffed CPE); Fourth Report and Ord er, 49 Fed. Reg. 47,265 (1984) (detariffing CPE owned by Western Union and the international record carrier); Fifth Report and Order, 49 Fed. Reg. 46,378 (1984) (addressing accounting procedures to be followed for detariffing CPE); Sixth Report and Order, 50 Fed. Reg. 1525 (1985) (establishing a framework for detariffing National Security and Emergency Preparedness (NSEP) CPE); and Seventh Report and Order, FCC 86-17 (released January 23, 1986) (detariffing federally-tariffed CPE owned by the independents and NSEP CPE).

[141] BOC CPE Relief Order, 2 FCC Rcd 143 (1987), modified on recon. FCC 87- 389, released December 17, 1987.

[142] U S West Manual at 32.

[143] See para. 77, supra.

[144] Joint Cost Order, 2 FCC Rcd at 1326, para. 218.

[145] U S West Manual at 34.

[146] Id.

[147] Colorado Comments at 15.

[148] U S West Reply at 14.

[149] Colorado Comments at 16.

[150] Id. at 15-16.

[151] U S West Reply at 14.

[152] See Automated Reporting Requirements Order, 2 FCC Rcd at Appendix C.

[153] Joint Cost Order, 2 FCC Rcd at 1326, para. 218.

[154] First Report and Order, Docket 79-105, Amendment of Part 31, Uniform System of Accounts for Class A and Class B Telephone companies, 92 FCC 2d 818, 828-29 (1981); see also Inside Wiring Reconsideration Order, 1 FCC Rcd 1190, 1190, para. 5 (1986), further recon. pending, petition for review docketed sub nom. NARUC v. FCC, No. 86-1687 (D.C. Cir. Dec. 11, 1986).

[155] For example, the manual describes one of the eleven cost pools as "Other Servicing Expense (FSUB 342E, excluding directly assigned FC's)." U S West Manual at 44.

[156] Colorado Comments at 16-17.

[157] U S West Reply at 14.

[158] We caution U S West to limit its use of the marketing allocator to a small percentage of its marketing costs. As in the case of the general allocator, the marketing allocator ratio is only meaningful if it represents a majority of total marketing expenses. Cf. Jo int Cost Ord er, 2 FCC Rcd at 1318, paras. 156-58. If we find that the marketing allocator is used to allocate a large percentage of marketing expenses, we will require carriers to amend their cost allocation procedures to maximize direct assignment and attribution.

[159] U S West Manual at 49.

[160] See Joint Cost Order, 2 FCC Rcd at 1318, para. 161.

[161] Colorado Comments at 17.

[162] U S West Reply at 15.

[163] Id.

[164] Colorado Comments at 17.

[165] U S West Reply at 15.

[166] Colorado Comments at 17.

[167] U S West Comments at 15-16.

[168] Colorado Comments at 19.

[169] U S West Comments at 16.

[170] Colorado Comments at 22.

[171] We further believe that book income should be operating book income before taxes and minus interest expense. Our proposed methodology ensures that the costs are being allocated correctly and in a straightforward manner, and better reflects the cost that is being allocated--income taxes.

[172] Colorado Comments at 21.

[173] U S West Reply at 17.

[174] Colorado Comments at 21.

[175] U S West Reply at 17.

[176] Colorado Comments at 20.

[177] U S West Reply at 16.

[178] Revised manuals shall be served on all parties to the U S West manual proceeding.

[179] One copy will be made available in the Accounting and Audits Division reference room, while the other will be maintained for staff use.

[180] Joint Cost Order, 2 FCC Rcd at 1328-29, para. 242.

[181] Automated Reporting Requirements Order, 2 FCC Rcd at 1328-29, at para. 46.

[182] We shall establish identical updating criteria for each of the BOCs. This action is consistent with the authority delegated by the Commission in the Joint Cost Order.

[183] A stay of the effectiveness of a proposed change to the manual shall not ! be for longer than 180 days.

[184] Of course, changes to corporate structure that also affect cost categories need to be filed in advance of implementation, as discussed supra.

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 86-495

In the Matter of

Basic Exchange Telecommunications Radio Service — RM 5442

REPORT AND ORDER

Adopted: December 10, 1987; Released: January 19, 1988

By the Commission: Chairman Patrick issuing a separate statement.

INTRODUCTION

1. On January 16, 1987, we issued a Notice of Proposed Rule Making (NPRM)[1] requesting comment on the establishment of a new radio service to be known as the Basic Exchange Telecommunications Radio Service (BETRS).[2] This NPRM was issued in response to the Petition for Rule Making filed by the Rural Electrification Administration (REA), National Rural Telecom Association, National Telephone Cooperative Association, the Organization for the Protection and Advancement for Small Telephone Companies, and the United States Telephone Association [3] (hereinafter Petitioners). We received comments andor reply comments from fifty-six parties. A list of parties filing comments and reply comments is supplied in Appendix 1. We have carefully considered each response received to the NPRM, and all points of view have been taken into account in this Order.

2. In their original petition, the Petitioners requested that Part 21 of the Commission's Rules be amended to allow telephone companies (i.e., local exchange carriers (LECs), which are certificated by a State regulatory authority to provide basic exchange service) access to mobile and cellular frequencies, on a co-primary basis.[4] The LECs would use these frequencies to construct radio loops between subscribers at fixed locations and their central offices. The radio loop would take the place of wire or cable, which in rural and rugged areas is often prohibitively expensive to install and maintain.

3. The Petitioners requested that 2 MHz of reserve cellular spectrum be dedicated for use as radio loops by LECs, and that these frequencies be available outside the Commission's existing procedures for cellular licensees. In addition, the Petitioners requested co-primary access to 450 MHz frequencies currently assigned for mobile common carrier use under Subpart G of Part 22 of the Commission's Rules. The Subpart G frequencies are currently available for fixed use only on a secondary basis through the Rural Radio Service.[5]

4. In the NPRM, we acknowledged the Petitioners' estimate that almost 900,000 households do not have standard telephone service because the cost of bringing wire or cable to their remote locations is prohibitive. We also noted that data based on actual demand were not provided, and requested "factual data on telephone company demand for BETRS service." Regardless of the lack of factual data which could define public need for BETRS more precisely, we found that Rural Radio Service is not adequately fulfilling its purpose for two reasons. First, the Rural Radio Service is secondary to the Public Land Mobile Service, so that RRS service areas are not protected from interference by mobile base stations. Second, the separate allocation for wireline and nonwireline conventional mobile frequencies was altered as a result of a separate Rule Making, *Report and Order on Reconsideration*, 99 F.C.C.2d 311 (1984), so that the frequencies could be used by both types of service providers, leading to the likelihood that the secondary status of RRS would result in telephone companies losing their RRS frequencies to a radio common carrier applying for PLMS use. Accordingly, we found that bringing basic exchange service to remote areas "is undeniably in the public interest; the difficulty is in finding available spectrum so as not to take needed services away from existing or potential users." (NPRM, paragraph 13.)

5. Based on our finding in the NPRM that Rural Radio Service is not fulfilling its purpose, we suggested three alternatives for making more frequencies available for radio loop technology to remote subscriber locations. We identified three groups of frequencies which appear to be available in rural areas and from which BETRS could draw. First, we proposed that the Rural Radio Service be changed from a secondary service to one with co-primary status vis-a-vis Public Land Mobile Service. Second, we proposed that Rural Service Area cellular licensees "be permitted to use the cellular frequencies in any manner they choose, consistently with any State regulatory requirements, to provide basic exchange telephone service to subscribers within their [Cellular Geographic Service Area] CGSA." (NPRM, paragraph 19). Third, we proposed that fifty frequency pairs in the Private Radio Service in the 800 MHz frequency band be available on a co-primary basis for BETRS, subject to certain area and frequency coordination restrictions. We did not propose a discrete allocation of cellular frequencies, or any other spectrum, for BETRS, as the Petitioners requested.

6. With regard to our proposal that Rural Radio Service be co-primary with Public Land Mobile Service, we discussed our concern that mobile units would cause unacceptable interference to fixed use of co- channel stations. We noted that the Commission's files contain no data on Rural Radio licensees other than their names, frequencies, and coordinates, and we noted that there is no bandwidth standard for the RRS. Thus, we stated in the NPRM that there are no data in the Commission's files with which to calculate interference contours. Moreover, there is no extant standard to calculate interference to a fixed subscriber station from a mobile unit, and therefore no method of protecting the fixed subscriber from potential interference from roaming mobile subscribers. Accordingly, we asked for comments on "how it might be possible to expand the use of Rural Radio Service," and we requested standards for ensuring that potential fixed subscribers would not experience disruptive interference from roaming mobile subscribers.

7. To help alleviate possible frequency shortage by heavy use of RRS frequencies in rural areas, and to provide BETRS operatives with technological alternatives, we

suggested 50 frequency pairs currently allocated to the Private Radio Service to supplement the Rural Radio Service. In doing so, we noted that the suggested frequencies are generally available in rural areas, and would be available on a co-primary basis with private radio band licensees. To ensure that fixed RRS use of the specified private radio band frequencies would not interfere with Private Radio Service licensees in urban areas, we proposed restrictions on use of these frequencies. First, they would not be licensed in a location within 100 miles of the border of the largest 54 Metropolitan Statistical Areas (MSAs) as defined in the Domestic Public Cellular Radio Service; second, co-channel stations would have to be separated by 70 miles; third, special frequency searches would have to be conducted in the Canadian Regions and within 68.4 miles of the Mexican border. We suggested that technical parameters for fixed use of the private radio band frequencies would be the same as for Rural Cellular licensees. Finally, we proposed that for administrative purposes, fixed use of the 50 frequency pairs by RRS licensees would be included within the Rural Radio Service under Part 22 of the rules.

8. Parties filing comments to our NPRM generally agreed that BETRS is in the public interest. However, the commenters disagreed on a number of issues. The single largest area of contention is eligibility to provide the service. Telephone companies, who comprise the majority of commenters to the NPRM, unanimously argued that only certificated LECs should be licensed for BETRS. On the other hand, the National Telecommunications and Information Administration (NTIA), the Wyoming Public Service Commission (Wyoming), and the Telocator Network of America's Paging Division (Telocator-Paging) argue that eligibility should not be limited to LECs.

9. Frequencies are another area of contention. A few parties challenged the use - or usefulness - of the 450 MHz band for BETRS. For example, Chazy-Westport, Citizens, Land Mobile Communications Council, Mark Twain Rural Telephone Company, NovAtel, Telocator-Paging, Tri-County, Van Horne, and Valley believe that other frequency bands would be preferable for BETRS due to lack of sufficient capacity in the RRS frequencies. The majority of commenters believe that co-primary access to RRS frequencies would be ideal for BETRS.

10. Associations which represent private radio band users, such as the American Petroleum Institute, the American SMR Network Association, the Associated Public-Safety Communications Officers, Inc., the Land Mobile Communications Council, the Special Industrial Radio Service Association, Inc., and the Utilities Telecommunications Council, oppose use of the private radio band for BETRS. However, none of these commenters argued that the specific frequencies identified in the NPRM are needed in rural areas to such an extent that common carrier co-primary use would displace Private Radio Service licensees. The National Association of Business and Educational Radio, Inc. (NABER), states that it realizes that in some areas of the country use of private radio frequencies may be necessary.

11. A number of parties suggest that a specific allocation should be made from other frequency bands for BETRS use. For example, GTE proposes that the Specialized Mobile Radio Service should be considered for BETRS. USTAOPASTCO and a number of independent telephone companies argue that an allocation should be made to BETRS from the General Mobile Radio Reserve. SR Telecom, Inc. (SRT), supported by Milford Engineering and Leaco Telephone Company, propose that SRT's point-to-multipoint microwave radio TDMA system, which operates in the 2 GHz band, be considered as well. Finally, Petitioners repeat their argument that a specific allocation should be made from the cellular frequency band for BETRS.

12. The demand for BETRS is subject to conflicting estimates. The first reason for the discrepancy in estimates is the types of studies offered by various parties. As discussed *supra*, the NPRM requested factual data regarding BETRS. Only Petitioners and Telephone and Data Systems, Inc., (TDS), (some of whose demand figures may have been included in the Petitioners' study), provided numbers of subscribers in specific service areas who would be willing to accept telephone service on the TDM system developed by International Mobile Machines (IMM). No party offered specific demand estimates based on availability of the proposed private radio band frequencies or fixed cellular service.[6]

13. Other parties offered estimates of potential subscribers based on various theoretical assumptions. Boeing Electronics Company and IMM, both manufacturers of spectrally efficient radio loop telephone systems, have similar estimates of potential subscribers. Karl A. Funke & Associates (Funke) estimated the number of households on the Navajo Reservation which do not have access to telephone service. Southwestern Bell Corporation (SBC) and U S WEST New Vector Group filing jointly with its Information Distribution Companies (NewVectorIDCs) discussed a study performed by the Bell Communications Research Company (Bellcore). As will be discussed, the estimates vary widely.

14. Accordingly, in this Order, we will address BETRS demand, BETRS eligibility, and the three frequency bands proposed for BETRS use. We conclude herein that the public interest will best be served by expanding fixed service options within the Rural Radio Service. Thus, we find that BETRS should be included within the Rural Radio Service, that RRS should be co-primary with PLMS, and that fifty channels from the Private Radio Service frequency allocation should be available on a co-primary basis for BETRS. Appendix 2 contains the amendments to Parts 2, 22, and 90 of our rules made pursuant to this Order.

DEMAND FOR BETRS

Background

15. The Petitioners surveyed rural telephone companies under the purview of the REA. The survey questionnaire requested numbers of subscribers who need upgrading, and those who are unable to be served, because the cost or practicality of wire plant is prohibitive. It specified a cost for radio loop technology of under4,000 per subscriber (the estimated Ultraphone[7] cost). The number of telephone companies receiving the questionnaire was 942. Of those, 138 telephone companies responded positively. Based on held orders, personal knowledge or best estimates, these companies said that nationwide, 7,731 new subscribers could be served or upgraded through radio loop technology. The subscriber distribution is 2,349 in the Northeast, of which Michigan has the lion's share at 2,151; 486 in the Southeast, of which Alabama, Georgia, Louisiana, and Tennessee show over 50 subscribers each;

3,234 in the Northwest, of which Minnesota has 1,696, Alaska has 568, Oregon and Washington have nearly 300 each, and Montana, North Dakota, and South Dakota have over 50 subscribers each; and finally 1,662 in the Southwest, of which Texas has 593, Arizona, California, and Colorado have just over 200 each, Nebraska has 170, Oklahoma has 133, and Kansas and New Mexico have over 50 subscribers each. Overall, 36 of the 46 States surveyed responded with some need for BETRS as described by the survey questionnaire.

16. The Petitioners argue that the 7,731 figure represents only the "pent-up" demand for BETRS, *i. e.*, the number of people responding that they would use the service, and that the number of eligible subscribers nationwide is almost 900,000, as argued in their original Petition. They conclude that the study confirms previous estimates that there is a need for BETRS throughout the United States, and that the study locates specific areas of no service where it was previously presumed that everyone who wanted telephone service could economically have it.

17. TDS estimates the number of subscribers within the service areas of its subsidiary franchisees. The number of potential subscribers in Michigan is 2067. TDS indicates that the number of subscribers which could be served in other states is as follows: Alabama, 94; S.Carolina, 10; Mississippi, 20; Tennessee, 12; Maine, 54; Wisconsin, 5; Oregon, 8; Washington State, 9; Idaho, 2; Arkansas, 6; Oklahoma, 8, for a total number of 2,295 subscribers in 12 States. However, it is not clear whether some of these figures were included in the Petitioners' survey, which also showed a high number of potential subscribers in Michigan.

18. IMM estimates that there are five basic types of applications for radio loop technology: 1) growth in the subscriber base; 2) upgrade of party lines to single party service; 3) replacement of deteriorating or inadequate wire plant (or "churn); 4) temporary or seasonal installations; and 5) new service to unserved populations. For its rural subscriber base, IMM takes the entire population outside the Standard Metropolitan Statistical Areas, or 20 million households. Taking various limiting factors into account, including the availability of frequencies in the 450 MHz band, it calculates an *annual* requirement for BETRS to be approximately half a million lines "at least for some number of years until the party line base was worked down." IMM estimates that it can serve 100 BETRS customers within the service contour of a base station with four or five radio channels, or 500 BETRS customers with fewer than two dozen radio channels in the 450 MHz common carrier mobile band.

19. The Bellcore study discussed by SBC and NewVectorIDCs calculates that the nationwide number of subscribers in rural areas who could be economically served by radio is in the range of 213,000 to 246,000.[8] The study also estimates that in areas outside the urban populations of 100,000 or more, there are an average 2.1 channels in the 450 MHz RRS band in use, leaving an average of 23.9 channels available.

20. Boeing Electronics Company, which filed late comments in this proceeding, estimates a total expected demand for BETRS at 2,900,000 subscribers, and argues that over 100 channels in each service area will be necessary to serve them.

21. Funke indicates that about 55% of American Indian households do not have telephone service. Funke implies that all but about 12% of such households have telephone service available, but have chosen not to subscribe, possibly due to cost. The cost of telephone service to Indian Reservations may be unusually high due to very low population density on Reservations, and Funke has also indicated that the average income of American Indians is so low that the cost of telephone service may be out of reach of most people.

Discussion

22. It is clear that there are different assumptions being made by commenters regarding radio loop technology as a means to provide basic telephone service. IMM and Boeing hope to serve millions of non-MSA telephone subscribers by radio loop technology who are now served on wireline facilities. On the other hand, the Petitioners hope to serve primarily those with substandard telephone service, no telephone service, or those in danger of losing affordable telephone service due to harsh climates which can lead to extensive repair requirements and rapid deterioration of plant. The Bellcore study, too, is geared towards these individuals. These differing assumptions may be one cause of the disparity in estimates of potential subscribers. It is our view that, subject to spectrum availability, BETRS may be provided whenever it is more efficient to use radio rather than wire.

23. The only conclusion which can be drawn with any certainty from the record is based on Petitioners' demand survey, which indicates that 138 telephone companies are prepared to consider implementation of radio loop technology for approximately 8,000 subscriber locations. In addition, the Commonwealth of Puerto Rico and the State of Maine have indicated that radio loop technologies are under consideration for remote areas. As indicated by Petitioners, the overwhelming number of interested subscribers are in Michigan, Minnesota, and Wisconsin. There are other large concentrations of interested subscribers in Texas, Alaska, Oregon, Washington, Arizona, California, Colorado, Nebraska, Oklahoma, and Montana. We are convinced by estimates other than the Petitioners' demand study that substantially greater demand exists, but its magnitude is uncertain. In particular, the number of frequencies needed in a given area is unknown. Moreover, no party mentioned whether Canadian or Mexican frequency coordination would be a problem for specific groups of subscribers.

24. Because the demand for BETRS is not clear, we will not allocate a discrete frequency band for this service at this time. In addition, we find that BETRS can be accommodated by sharing frequency bands with existing services. Whereas frequencies in certain services are heavily used in major metropolitan areas, these frequencies are often lightly used or vacant in rural areas where BETRS seeks to operate. Thus, sharing of frequencies by BETRS with other services advances our objective of spectrum efficiency.

25. We believe that the allocations made in this order, together with cellular fixed service, will provide adequate spectrum to meet existing demand for BETRS. However, should these allocations prove to be insufficient at a future date, we will revisit the problem at that time.

ELIGIBILITY

Background

26. Many commenters urged us to limit licensure of BETRS frequencies to telephone companies, while others argued that we should license any entity eligible to apply for Part 22 frequencies. The telephone companies and associations in favor of limiting BETRS to LECs argue that only the States have authority to regulate intrastate services, that BETRS is intended to be an extension of intrastate basic exchange service, that non-certificated entities providing fixed service will "skim the cream" from rural service areas, thus making all telephone service more expensive to consumers, that non-certificated entities cannot be relied upon to maintain frequency availability to rural customers, and that non-certificated entities who resell frequency space to telephone companies for BETRS are "middle-men" who would artificially drive up prices. Parties arguing in favor of opening BETRS to any entity eligible under Part 22 do so on the grounds that competition has been found to benefit common carrier services, that rural subscribers may not have access to all services they want unless competition is permitted, and that there are virtually no radio common carrier services which are not open to competition. In addition, Telocator- Paging expressed concern that some applicants may use BETRS as a method to circumvent mobile licensing procedures[9] designed to avoid inefficient spectrum use and warehousing, both of which result in unfair competition by artificially restricting the number of channels available to PLMS competitors. Finally, we note that one of the two State commenters, Wyoming, is not in favor of limiting the provisions of BETRS to certificated telephone companies. On the other hand, the State of Maine, while in favor of affording non-wireline licensees the opportunity to provide BETRS, believes that such authority should be limited to areas where wireline carriers are unable or unwilling to provide service.

Discussion

27. The issue of appropriate federal eligibility requirements for BETRS is separate from the issue of State authority over intrastate basic communication services. BETRS is provided so that radio loops can take the place of (expensive) wire or cable to remote areas. It is intended to be an extension of intrastate basic exchange service. Because BETRS is provided as an extension of basic exchange service, we will require that a service provider be a State certified local exchange carrier or, if not a certified LEC, have some form of permission from the State to provide basic exchange radio service. Accordingly, any entity may apply with us to provide BETRS, so long as it can demonstrate that it has authority from the state to use the frequencies to provide service or that no such authority is required by the State. If we were not to require that permission or certification, an entity could be licensed by us and denied permission from the State, thereby tying up spectrum that it might never be able to utilize.[10] We believe this prior State certification or permission is necessary because of the basic exchange nature of the service.

RURAL RADIO SERVICE

Background

28. Most commenters are in favor of making the Rural Radio Service available on a co-primary basis with PLMS licensees.[11] However, there are some problem areas which we will address in formulating changes to the Rural Radio Service for BETRS. First, while there is a need to establish interference standards based on engineering parameters of co- channel stations, the requisite engineering data for existing RRS licensees is not on file. Second, there is a potential for abuse of BETRS licensing procedures. Third, there is the issue raised in the NPRM concerning interference to fixed subscriber stations by roaming mobile units.

29. Some commenters, echoing concerns raised in the NPRM, point out that no engineering information is available regarding RRS stations in the Commission's files. Thus, it would be impossible for a potential applicant to research service contours of co-channel RRS stations. (Such information is on file for co-channel PLMS stations). Several commenters suggested that engineering information be required of existing RRS stations in order to make such research possible. In addition, commenters suggested that interference standards be established using a Carey analysis[12] and establishing a contour for base stations which transmit to fixed subscribers protected to the 39 dBu level (on 450 MHz frequencies), at least until further refinements are shown to be necessary. In addition, NewVectorIDCs proposed a number of engineering restrictions to bring RRS bandwidth, emissions, antenna heightpower, etc., in line with the standards for PLMS service so that uniform channel bandwidths and interference parameters would be available nationwide.

30. Telocator-Paging is concerned that the BETRS licensing process will be abused. Telocator-Paging argues that the Commission should avoid a major reallocation of 450 MHz PLMS channels from mobile to fixed use. It urges the Commission to implement regulations which would prevent the use of BETRS as a means to avoid current channel loading requirements. In addition, Telocator-Paging is concerned that BETRS facilities could block expansion of existing land mobile systems. Telocator-Paging argues that there should be restrictions on use of 450 MHz frequencies, and that they should be a last resort if private radio or cellular frequencies are not available.

Discussion

31. Based on our review of all the comments, we will authorize co-primary access to all licensees in the Rural Radio Service on both the 150 MHz band and the 450 MHz band, subject to the requirements discussed herein.[13] We recognize that there is a problem with coordinating frequencies in the RRS because engineering information is not available in the Commission's files. Accordingly, we will apply the existing PLMS bi-level interference standard. On the one hand, an RRS applicant has the option to show mileage separation from co-channel stations based on the geographical separation standards of Sections 22.502 and 22.503 of the Commission's Rules. Under this option, a co-channel interference study as described in Section 22.15(b)(2) of the Commission's Rules is not required. On the other hand, applicants who cannot show the mileage separation appropriate for their proposed 150 MHz or 450 MHz frequency must comply with Section 22.15(b)(2). Furthermore, all applications for RRS facili-

ties are now required to comply with Section 22.15(b) so that engineering information for new stations will be in the Commission's files. We decline to require existing RRS stations to provide Section 22.15 information because commenters have not shown that there will be enough co-channel stations inside the geographic separation areas of existing RRS stations to justify this requirement. However, we will require existing RRS stations to provide engineering information to would-be co-channel applicants who cannot make use of the geographical separation option. A further requirement designed to reduce or avoid interference is that the RRS fixed subscriber stations must each use a directional antenna with its main lobe of radiation directed towards the base station.[14] Finally, we will not change the flexibility of RRS engineering requirements to match those of the PLMS, as requested by NewVectorIDCs. This service is intended to be adaptable to unusual and difficult service problems presented by rural areas, and many RRS stations already exist which do not meet PLMS technical limitations. However, close scrutiny will be given to applicants requesting atypical bandwidth and power parameters for fixed service.

32. Finally, the NPRM expressed concern about potential interference problems between fixed stations and roaming mobile units on co-channel frequencies. However, assuming technical standards (discussed *supra)* designed to protect RRS and PLMS base stations from co-channel interference, commenters generally did not express great concern that roaming mobile units would cause unacceptable interference to fixed stations. As expressed by NewVectorIDCs, "service occasionally subject to interference is better than no serive at all".

SUPPLEMENTAL PRIVATE RADIO FREQUENCIES

Background

33. Most of the commenters who use private radio band spectrum oppose the use of any Part 90 frequencies for BETRS. For example, the American Petroleum Institute (API) argues that heavy usage of private radio channels in rural areas is not uncommon, and in fact many private land mobile operators use private radio channels more heavily in rural areas than in urban areas. Both API and the American SMR Network Association, Inc., argue that common carrier services should be kept on common carrier channels. Other commenters oppose use of the private radio band frequencies because they argue that the restrictions placed on their use in the NPRM would make them unusable in most areas in which they may be needed.

34. The National Association of Business and Educational Radio, Inc. (NABER), which is the certified frequency coordinating committee for the Business Radio Service in the Private Radio Service, agrees that use of the proposed frequencies, subject to the restrictions proposed in the NPRM, may be necessary in some situations. However, NABER suggests that the number of frequency pairs available on a co-primary basis should be reduced to five from the fifty proposed.

35. Motorola points out that within 68 miles of the Mexican border, 12.5 kHz offsets of some of the listed channels are used for public safety operations. It argues that the NPRM's proposal will not adequately protect these channels. Motorola is concerned that locating such systems just outside the 68 mile border area could result in interference between public safety and BETRS operations. Accordingly, Motorola suggests that proposed Section 22.601(a)(3) be revised to prohibit BETRS within 100 miles of the Mexican border.

Discussion

36. We are adopting the rules as proposed in the NPRM permitting use of the fifty Private Radio Service frequency pairs by BETRS licensees in the Rural Radio Service. Private Radio frequencies other than the designated 50 frequency pairs may be assigned for the Canadian Regions and the Mexican border offset area on a case-by-case basis pursuant to waiver for good cause shown. We do not believe it is necessary to reduce the number of frequency pairs available to BETRS licensees, as suggested by NABER. While it is true that not all the frequencies may be needed in any one area due to possible frequency re-use, it cannot be predicted which of the channels already are - or will be - in use in various parts of the country. Furthermore, re-use patterns, if any, will depend on the technology chosen by the BETRS operator.[15]

37. Associations of entities which use the Part 90 private radio band, who have opposed the addition of 50 frequencies on a co-primary basis, have not shown that the overall level of channel use in areas outside the top-54 MSAs is such that private radio users will be foreclosed from adequate frequency availability. Indeed, as noted in the NPRM, the Commission's records indicate that the proposed 50 frequency pairs are not generally used in less populated areas. Furthermore, we note that Motorola believes that outside the top 54 MSAs, there is sufficient private radio spectrum available to meet both private and BETRS needs through the end of this century.

38. We do not think it is necessary, at this time, to expand the prohibited area from the Mexican border to 100 miles as Motorola proposed. Although Motorola expresses a valid point regarding the public safety channels on 12.5 kHz offsets, we will resolve potential conflict by employing the co-channel separation requirement of 70 miles to cochannel stations or to those operating 12.5 kHz offset from those channels.

FIXED CELLULAR SERVICE

39. In the NPRM we proposed that cellular licensees be permitted to offer fixed service in a manner which would facilitate universal telephone service. However, on October 15, 1987, we released a Notice of Proposed Rule Making in General Docket 87-390 in which we proposed to amend Parts 2 and 22 of our rules to allow cellular radio licensees to introduce advanced cellular technologies and to provide auxiliary services. The provision of fixed service such as BETRS was one of the auxiliary services proposed in that Notice. We also proposed allowing one-way paging service and to redefine what types of services are considered dispatch service. Cellular licensees would be permitted to provide non-dispatch services. We proposed allowing these services in the entire cellular band, or alternatively only in the 10 MHz recently added to the cellular allocation. We believe that the nature and extent of the use of the cellular spectrum for the provision of auxiliary services, and the portion of the cellular band in which these services should be offered, must be carefully considered. We have concluded that it would be premature to address only one of these issues in this proceeding. Accordingly, comments pertaining to use of cellular spectrum filed in this docket will be considered in General

Docket 87-390. However, we would like to emphasize that incidental fixed cellular service may continue to be offered by MSA licensees pursuant to existing regulations.[16] Furthermore, future RSA applicants may include fixed service areas in their proposed CGSA.

ALTERNATIVE FREQUENCY BANDS

40. SR Telecom, Inc. (SRT), supported by Milford Engineering and Leaco Telephone Company, propose that SRT's point-to-multipoint microwave radio TDMA system, which operates in the 2 GHz band, be considered as an alternative to the NPRM proposals. Several parties requested a discrete allocation from the General Mobile reserve spectrum for BETRS. In addition, a few parties mentioned Land Mobile Satellite Service (LMSS) as a source of interconnection for rural locations. We will defer any consideration of alternative frequency bands until such time as we have evidence that the frequencies allocated in this order are inadequate for the demand.

CONCLUSION

41. In this Order, we have affirmed our conclusion that it is in the public interest to establish BETRS within the existing Rural Radio Service. In addition, we have allowed RRS operations co-primary access to the 150 MHz and 450 MHz frequencies in the mobile radio band, and made fifty pairs of Private Radio Service frequencies, subject to area restrictions, available to BETRS operations. As stated earlier, the estimates of demand for this service vary greatly. We believe that the provision of BETRS can be accommodated by the amendments to the rules made in this Order. Our decision in General Docket 87-390 may make further spectrum available. If, as the service develops, additional spectrum is needed, we will consider that need at that time.

REGULATORY FLEXIBILITY ACT - FINAL ANALYSIS

42. *Reasons for action and objectives.* The Rule Making action will facilitate availability of basic exchange telephone service to rural customers who cannot now receive such service due to the high cost of constructing and maintaining wire or cable to their locations. The Rule Making action may also offer an economical alternative for existing rural area plant which is prohibitively expensive to replace and maintain.

43. *Specific alternatives which could accomplish the same objectives.* We have determined that no specific alternatives, other than fixed cellular service, would allow an equal potential for economical and efficient service to rural households and businesses desiring basic exchange telephone service, while at the same time maintaining spectrum efficiency. The question of more-than-incidental fixed cellular service will be considered in a separate Rule Making, General Docket 87-390. Overall, the new rules should have a positive economic impact on small entities because they will provide them opportunities to improve existing communications services or to enter new markets for communications services.

44. *Issues raised by the public in response to the initial analysis.* SR Telecom, Inc., offered its admittedly spectrally efficient and economical point-to-multipoint microwave telephone system, which operates in the 2 GHz band, for use by rural subscribers. However, we find that there is no showing of sufficient demand to justify a discrete allocation of spectrum for BETRS in the 2 GHz band.

ORDERING CLAUSES

45. WHEREFORE, for the foregoing reasons, Parts 2, 22 and 90 of the Commission's Rules ARE HEREBY AMENDED as discussed herein and as shown in Appendix 2 below;

46. IT IS FURTHER ORDERED that all Rural Radio Service licensees whose licenses were granted on a secondary basis ARE HEREBY UPGRADED to co-primary status with Public Land Mobile Service stations;

47. IT IS FURTHER ORDERED that the rule changes made herein WILL BECOME EFFECTIVE **February 29, 1988**;

48. IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster
Acting Secretary

Statement of Chairman Dennis R. Patrick
on
Report and Order implementing
Basic Exchange Telecommunications Radio Service
CC Docket No. 86-495

The Commission's authorization today of spectrum for Basic Exchange Telecommunications Radio Services (BETRS) represents yet another major step by the Commission in the pursuit of our goal of extending basic telephone service to as many Americans as possible. Many rural Americans do not have telephone service today because of the high cost of stringing copper wire from the telephone company's central office to their households. The use of sophisticated new radio technology and unused spectrum by BETRS provides another, more cost-effective alternative to connect those individuals to the telephone network. The success of experimental BETRS systems over the last few years gives us great hope that the availability of spectrum for BETRS in rural areas will significantly expand universal service in those regions of the country.

BETRS thus complements the Link-Up America program recently initiated by the Commisssion upon recommendation of the FederalState Joint Board, which provides assistance to low-income consumers to meet the telephone service commencement charges. Through these programs, as well as the High Cost Fund, the Commission is taking action to fulfill its obligation to pursue universal telephone service in this country.

APPENDIX 1

PARTIES FILING COMMENTS AND REPLY COMMENTS TO NOTICE OF PROPOSED RULE MAKING

Parties filing comments:

Ad-Hoc Group of Independent Telephone Companies (ITC Group)

Aeronautical Radio, Inc. (ARINC)

American Petroleum Institute (API)

American SMR Network Association, Inc. (SMR Network) Ameritech Mobile Communications, Inc. (Ameritech)

Ameritech Operating Companies (Ameritech)

Associated Public-Safety Communications, Inc. (APCO)

Bell South Corporation (Bell South)

BETRS Petitioners [Rural Electrification Administration, National Rural Telecom Association, National Telephone Cooperative Association]

Cathey, Hutton and Associates, Inc. (Cathey-Hutton)

Cellular Telecommunications Division of Telocator Network of America Cellular Telecommunications Industry Association (CTIA)

Chazy & Westport Telephone Corporation (Chazy-Westport)

Citizens Utilities Company (Citizens)

Community Service Telephone Co. (Community)

Contel Corporation (Contel)

GTE Service Corporation and its Affiliated General Telephone Operating Companies (GTE)

Hughes Telephone Company (Hughes)

Illinois Consolidated Telephone Company (ICTC)

International Mobile Machines Corporation (IMM)

Karl A. Funke & Associates, Inc. (Funke)

Land Mobile Communications Council (LMCC)

Leaco Rural Telephone Coop., Inc. (Leaco)

Lewis River Telephone Company, Inc. (Lewis River)

Maine Public Utilities Commission and Maine Public Advocate (Maine)

Mark Twain Rural Telephone Company (Mark Twain)

McCaw Communications Companies, Inc. (McCaw)

Milford Engineering, Inc. (Milford), and supplement to comments

Motorola, Inc. (Motorola)

National Association of Business and Educational Radio, Inc. (NABER)

National Telecommunications and Information Administration (NTIA)

NovAtel Communications Ltd. (NovAtel)

Nynex Mobile Communications Company (NYNEX Mobile)

Nynex Telephone Companies (NYNEX Telephone)

OKI Telecom (OKI)

Pacific Bell, Nevada Bell, and Pactel Cellular (the Pacific Companies)

Puerto Rico Communications Authority (PRCA)

Southwestern Bell Corporation (SBC)

Special Industrial Radio Service Association, Inc. (SIRSA)

SR Telecom Incorporated (SRT)

Telephone and Data Systems, Inc. (TDS)

Texas Statewide Telephone Cooperative, Inc. (Texas Coop)

Telocator Network of America, Cellular Telecommunications Division (Telecator-Cellular)

Telocator Network of America, Paging Division (Telocator-Paging)

Tri-County Telephone Company (Tri-County)

United States Telephone Association and the Organization for the Protection and Advancement of Small Telephone Companies (USTAOPASTCO)

United Telecommunications Council (UTC)

United Telecommunications, Inc. (UTI)

US West NewVector Group, Inc., the Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company, Pacific Northwest Bell Telephone Company (NewVectorIDCs)

Valley Telephone Company (Valley)

Vanguard Cellular Systems, Inc. (Vanguard)

Van Horne Cooperative Telephone Company (Van Horne)

Parties filing reply comments:

American Petroleum Institute (API)

Associated Public-Safety Communications Officers, Inc. (APCO)

Bell South Corporation (Bell South)

BETRS Petitioners

Boeing Electronics Company (Boeing) [late-filed comments]

Cellular Telecommunications Industry Association (CTIA)

Empire Telephone Company and North Penn Telephone Company (Empire; North Penn)

GTE Service Corporation and its Affiliated General Telephone Operating Companies (GTE)

International Mobile Machines Corporation (IMM)

Land Mobile Communications Council (LMCC)

MA-COM Telecommunications, Inc. (MA-COM)

McCaw Communications Companies, Inc. (McCaw)

Milford Engineering, Inc. (Milford)

Motorola, Inc. (Motorola)

North Pittsburgh Telephone Company (Pittsburgh)

NovAtel Communications, Ltd. (NovAtel)

Pacific Bell, Nevada Bell, and Pactel Cellular (the Pacific Companies)

Southwestern Bell Corporation (SBC)

Special Industrial Radio Service Association, Inc. (SIRSA)

Telocator Network of America (Cellular Telecommunications Division) (Telocator-Cellular)

Telocator Network of America (Paging Division) (Telocator-Paging)

Tri-County Telephone Company, Inc. (Tri-County)

United States Telephone Association and the Organization for the Protection and Advancement of Small Telephone Companies (USTAOPASTCO)

U S West NewVector Group, the Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company, Pacific Northwest Bell Telephone Company (NewVectorIDCs)

Wyoming Public Service Commission (Wyoming)

APPENDIX 2

PROPOSED RULES SECTION

Part 2 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

Part 2 - Frequency Allocations and Radio Treaty Matters; General Rules and Regulations

Section 2.106 Table of Frequency Allocations

1. Section 2.106 will be amended by adding a reference to note "NG31" to the table section stating "806-821 - LAND MOBILE" in column 5 (non- government allocation in the United States).

2. Section 2.106 will be amended by adding a reference to note "NG31" to the table section stating "851-866 - LAND MOBILE" in column 5 (non- government allocation in the United States).

3. Section 2.106 will be amended by adding note "NG31" as follows:

* * * * *

NG31 Stations in the Rural Radio Service licensed for Basic Exchange Telecommunications Radio Service may be authorized to use some frequencies in the bands 816 - 820 MHz (central office or base) and 861 - 865 MHz (fixed subscriber), on a co-primary basis with private land mobile radio licensees, pursuant to Part 22 Subpart H.

* * * * *

Part 22 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

Part 22 - Public Mobile Service

1. The authority citation for Part 22 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended (47 U.S.C. 154, 303), sec. 553 of the Administrative Procedure Act (5 U.S.C. 553), unless otherwise noted.

Section 22.2 Definitions

2. Section 22.2 will be amended by adding the definition "Basic Exchange Telecommunications Radio Service" and revising paragraph (1) of the "Rural Radio Service" definition as follows:

* * * * *

Basic Exchange Telecommunications Radio Service. One of the public radio services available through the Rural Radio Service. This Service provides public message communication service between a central office and subscribers located in rural areas.

* * * * *

Rural Radio Service. *** (1) Basic Exchange Telecommunications Radio Service, which is public message communication service between a central office and subscribers located in rural areas, ***

* * * * *

Section 22.601 Frequencies.

3. Section 22.601(a) will be revised to read as follows: 22.601(a) Licensees authorized pursuant to this section may offer fixed service only. However, nothing in this part is intended to change the requirement of Section 22.501(c) for entities licensed in the Public Land Mobile Service.

(1) The frequencies in subsection (b) are available to applicants in the Rural Radio Service, including Basic Exchange Telecommunications Radio Service, on a co-primary basis with stations in the Public Land Mobile Service; (2) The frequencies in subsection (c) are available to applicants in the rural radio service, for the provision of Basic Exchange Telecommunications Radio Service, provided the following conditions are met: (i) rural radio service licensees may not use these frequencies within 100 miles of the border of the top 54 SMSAs as defined in the Domestic Cellular Radio Service; (ii) the frequencies must be used as grouped and paired; (iii) rural radio licensees must protect licensed systems at the time of grant; (iv) the same frequency group may not be reassigned to a base station within 70 miles of another base station on the same channels or channels offset by 12.5 kHz; (v) technical parameters for the use of these frequencies are contained in Subpart S and Subpart M of Part 90 of the Commission's Rules; (vi) applications for the use of these frequencies should be submitted by applicant to the Common Carrier Bureau for review, from where they will be forwarded to the Private Radio Bureau for coordination and frequency availability; (3) For the Canadian Regions and within 68.4 miles of the Mexican border, the frequencies in subsection (c) are not available. (4) All applicants in the Basic Exchange Telecommunications Radio Service must have first acquired whatever authorization is needed to provide this service from the state in which applicant proposes to offer BETRS. If no authorization is needed in the state in which applicant proposes to offer BETRS, applicant should so indicate in its application.

* * * * *

Section 22.601 Frequencies

4. Existing Sections 22.601(c) through 22.601(f) will be redesignated as Sections 22.601(d) through 22.601(g), and a new Section 22.601(c) is proposed to be added which will read as follows:

* * * * *

(c) The following frequencies are available on a co-primary basis for Basic Exchange Telecommunications Radio Service:

Subscriber Location	Central Office
816.2375	861.2375
817.2375	862.2375
818.2375	863.2375
819.2375	864.2375
820.2375	865.2375
816.2125	861.2125
817.2125	862.2125
818.2125	863.2125
819.2125	864.2125
820.2125	865.2125
816.1875	861.1875
817.1875	862.1875
818.1875	863.1875
819.1875	864.1875
820.1875	865.1875
816.1625	861.1625
817.1625	862.1625
818.1625	863.1625
	819.1625
	864.1625
820.1625	865.1625
816.1375	861.1375
817.1375	862.1375
818.1375	863.1375
819.1375	864.1375
820.1375	865.1375
816.1125	861.1125
817.1125	862.1125
818.1125	863.1125
819.1125	864.1125
820.1125	865.1125
816.0875	861.0875
817.0875	862.0875
818.0875	863.0875
819.0875	864.0875
820.0875	865.0875
816.0625	861.0625
817.0625	862.0625
818.0625	863.0625
819.0625	864.0625
820.0625	865.0625
816.0375	861.0375
817.0375	862.0375
818.0375	863.0375
819.0375	864.0375
820.0375	865.0375
816.0125	861.0125
817.0125	862.0125
818.0125	863.0125
819.0125	864.0125
820.0125	865.0125

* * * * *

Section 22.609 Supplementary showing required with applications for rural radio service.

5. Section 22.609(d) and subparagraph 22.609(d)(1) will be revised to read as follows:

* * * * *

22.609(d) All applications for Central Office, Inter Office and Relay Stations shall provide the following information:

(1) a showing listing all co-channel facilities required by Section 22.15(b) and interference studies, pursuant to Section 22.15(b)(2), demonstrating that the proposed facility will not cause harmful electrical interference to those co-channel facilities identified in Section 22.15(b);

* * * * *

Part 90 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

Part 90 - Private Land Mobile Radio Services

1. The authority citation for Part 90 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.

Section 90.362 Selection and assignment of frequencies.

1. Section 90.362 is amended by adding new paragraph (f) to read as follows:

* * * * *

(f) Channel numbers 401-410, 441-450, 481-490, 521-530, and 561-570 are available on a co-primary basis to stations in the Basic Exchange Telecommunications Radio Service as described in Part 22 of the Commission's Rules.

Section 90.621 Selection and assignment of frequencies.

2. Section 90.621 will be amended by adding new paragraph (j) to read as follows:

* * * * *

(j) Channel numbers 401-410, 441-450, 481-490, 521-530, and 561-570 are available on co-primary basis to station in Basic Exchange Telecommunications Radio Service as described in Part 22 of the Commission's Rules.

FOOTNOTES

[1] In the Matter of Basic Exchange Telecommunications Radio Service, 2 FCC Rcd 326 (1987), 52 Fed. Reg. 04360 (February 11, 1987).

[2] BETRS "is a public message communicationservice between a central office and subscribers located in rural areas." *See* Appendix 2.

[3] The United States Telephone Association and the Organization for the Protection and Advancement of Small Telephone Companies (USTAOPASTCO) did not join with the original petitioners in comments or reply comments on the NPRM. USTAOPASTCO filed joint comments and reply comments.

[4] Petitioners define "basic exchange service" as the services provided by a common carrier or public utility defined as "telephone exchange service" in Section 3(r) of the Communications Act of 1934 as amended, [Section 153(r) of Title 47 U.S.C.], and as 'access services' defined in Section 69.2(a) of our Rules.

[5] Rural Radio Service (hereinafter "RRS) is governed by Section 22.600 *et seq*. of the Commission's Rules. RRS is the primary recourse now available for individuals desiring telephone service but who cannot afford the charges for wire or cable to be brought to their locations. As the service exists today, the RRS subscriber normally uses a standard conventional radio telephone installed in his dwelling and may be served through a base station that provides landline interconnection to fixed andor mobile subscribers. The frequencies available for fixed subscriber RRS are the same as those available in the Public Land Mobile Service (hereinafter "PLMS). About half of the channels in the PLMS are earmarked such that a PLMS licensee operating on one of the earmarked frequencies *must* offer service to a fixed subscriber in the RRS upon request. There are also licensees who offer only fixed RRS service. This Rule Making is not intended to require a change in present arrangements for fixed service through RRS, but to offer additional opportunities for subscribers and operatives. In addition to subscriber interconnection service, the RRS provides public message communication service between landline central offices and different exchange areas. RRS is also available for private line telephone, telegraph, or facsimile service between 2 or more points to which it is impracticable to extend service via landline. *See* Section 22.2 of the Commission's Rules.

[6] Nevertheless, we consider it likely that many of the subscriber locations without standard telephone service could be effectively and economically served by at least one of these alternative methods. The Commission contemplated that rural telephone companies would use cellular frequencies to provide economical telephone service to people in their areas, and indeed many independent rural telephone companies have, in cellular Rule Making proceedings, petitioned the Commission to set aside half the cellular spectrum for wireline companies for just this purpose. In addition, the private radio band can be accessed through equipment currently used by mobile subscribers in the Private Radio Service.

[7] The Ultraphone Wireless Digital Loop Carrier System is IMM's digitized, time division multiplexed radio loop designed to replace rural area wire and cable (hereinafter "Ultraphone).

[8] There are no "growth" figures indicated by this study.

[9] Telocator-Paging refers to the Commission's requirement that an application for one or more *additional* two-way mobile frequencies must show that the applicant's existing channels carry sufficient traffic loading to justify the additional frequencies. *See* Section 22.16 of the Commission's Rules.

[10] It is our intention that wire and radio basic exchange service be treated similarily with regard to eligibility for high cost assistance.

[11] In the NPRM, we proposed to make Rural Radio Service co-primary with PLMS. Rural Radio Service includes 150 MHz channels as well as 450 MHz channels, however, since 150 MHz channels are preferred by licensees for mobile use because of their better propagation qualities, such frequencies are scarce. Nevertheless, some 150 MHz channels are still available in rural areas. Although few commenters mentioned 150 MHz band freqencies in connection with fixed service, we find it appropriate to permit fixed service on such frequencies, pursuant to the technical parameters described herein. The base-to-base interference protection for co-channel RRS and PLMS licensees offered by the 150 MHz technical parameters will offer the same interference protection as the 450 MHz technical parameters will afford to co-channel licensees on the 450 MHz channels.

[12] FCC Report No. R-6406, "Technical Factors Affecting the Assignment of Facilities in the Domestic Public Land Mobile Radio Service," by Roger B. Carey, is the standard for signal propagation, and hence interference limitations, for the PLMS.

[13] Moreover, we will accord all existing Rural Radio Service licensees and applicants co-primary status with PLMS stations. We have determined that the public interest is no longer served by maintaining RRS in a secondary status. When the secondary status requirement was implemented, fewer opportunities existed for two-way mobile communications. The advent of cellular technology has effectively relieved the pressure to reserve the 150 MHz and 450 MHz common carrier frequencies exclusively for mobile use. *See* Notice of Proposed Rule Making, CC Docket 87-120. We do not anticipate that co-primary status will result in a *de facto* reallocation of the 150 MHz and 450 MHz bands because of the constraints in the rules. *See* , 47 C.F.R. Section 22.2.

[14] IMM states that its Ultraphone system can be placed much closer to co-channel stations without destructive interference to either station. The separation requirements we promulgate herein may, of course, be lowered if the applicant provides a statement from co-channel stations indicating that interference will be accepted.

[15] Moreover, upon further reflection, we have decided to apply the engineering requirements set forth in Part 90 of the private radio service rules rather than those in Part 22. We have determined that the only practicable means of preventing interference to the different entities that will be using this spectrum is to maintain consistent engineering parameters for these frequencies. Accordingly, as shown in amended Section 22.601(a), we will require RRS licensees using private radio frequencies to comply with private radio service engineering requirements.

[16] Incidental services are presently permitted under existing rules. Thus, cellular service in each MSA must be primarily for mobile use, but incidental fixed cellular service may be offered.

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: January 19, 1988

MARITIME NARROW - BAND DIRECT - PRINTING FREQUENCIES AVAILABLE FOR ASSIGNMENT

The following frequencies, which are available for maritime narrow-band direct-printing (NBDP) communications, were recently recovered from licensees of public coast stations that had not put them in operation as required by Rule 80.49. The frequencies are now available for reassignment.

4352.5 kHz	8713.5 kHz
4353.5 kHz	8714.0 kHz
6497.0 kHz	13072.0 kHz
6498.0 kHz	13075.0 kHz
6503.0 kHz	13080.0 kHz
6503.5 kHz	13089.0 kHz
8707.5 kHz	13097.0 kHz

Applications for one or more of the frequencies may be filed at any time. However, each frequency can be assigned to one station only. For further information contact the Private Radio Bureau: Carol Foelak at (202) 632-7197 or Marcus Stevens at (717) 337-1431.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-593

In the Matter of

Amendment of Section 73.202(b), RM-6049
Table of Allotments,
FM Broadcast Stations.
(Baker, Louisiana)

NOTICE OF PROPOSED RULE MAKING

Adopted: December 14, 1987; Released: January 19, 1988

By the Chief, Allocations Branch:

1. At the request of Jeffrey G. Welsh (petitioner), the Commission has before it a petition for rule making proposing the allotment of Channel 297A to Baker, Louisiana, as that community's first FM channel. Petitioner has furnished information in support of the proposal and states his intention to apply for the channel, if allotted. The channel can be allocated consistent with the Commission's minimum separation requirements.

2. In view of the fact that the proposed allocation could provide a first FM service to Baker, Louisiana, the Commission believes it is appropriate to propose amending the FM Table of Allotments, Section 73.202(b) of the Commission's Rules with regard to the following community:

	Channel No.	
City	Present	Proposed
Baker, Louisiana	---	297A

3. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

4. Interested parties may file comments on or before **March 11, 1988,** and reply comments on or before **March 28, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Gary S. Smithwick, Esq.
Baraff, Koerner, Olender
& Hochberg, P.C.
2033 M Street, N.W.
Suite 203
Washington, D.C. 20036
(Counsel to petitioner)

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

6. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Mark N. Lipp
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in

reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-601

In the Matter of

Amendment of Section 73.202(b), RM-5950

Table of Allotments,
FM Broadcast Stations.
(Galliano, Louisiana)

NOTICE OF PROPOSED RULE MAKING

Adopted: December 14, 1987 Released: January 19, 1988

By the Chief, Allocations Branch:

1. Pursuant to the request of Callais Broadcasting, Inc. (petitioner), license of Station KBAU(FM), Channel 232A, Galliano, Louisiana, the Commission considers herein a petition for rule making proposing to modify its license from a Class A station operating on Channel 232A to a Class C2 station operating on the same channel. Petitioner has submitted informtion in support of the proposal.

2. The modification can be made in compliance with the minimum separation requirements with a site restriction 27.9 kilometers (13.3 miles) west of Galliano to avoid short spacing to a construction permit for Station WXLT(FM), Channel 231C1, McComb, Mississippi and vacant Channel 231A at Buras Triumph, Louisiana. In accordance with Section 1.420(g) of the Rules we shall not accept competing expressions of interest nor require that the petitioner demonstrate the availability of an additional equivalent channel.

3. Accordingly, in order to provide Galliano with its first wide coverage area FM service, the Commission proposes to amend the FM Table of Allotments, Section 73.202(b) of the Rules, with regard to the following community:

	Channel No.	
City	Present	Proposed
Galliano, Louisiana	232A	232C2

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **March 11, 1988,** and reply comments on or before **March 28, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Bradford D. Carey, Esq.
Hardy, Popham & Wirpel
700 Camp Street
New Orleans, LA 70130
(Counsel to Petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Mark N. Lipp
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-602

In the Matter of

Amendment of Section 73.202(b), RM-6091
Table of Allotments,
FM Broadcast Stations.
(Roseburg, Oregon)

NOTICE OF PROPOSED RULE MAKING

Adopted: December 14, 1987 ; Released: January 19, 1988

By the Chief, Allocations Branch:

1. The Commission has before it for consideration the petition for rule making filed by Michael R. Wyatt (petitioner), requesting the substitution of Channel 276C2 for Channel 276A at Roseburg, Oregon, and the modification of his license for Station KRSB-FM to specify the higher powered channel. Petitioner states that the increase in facilities will enable Station KRSB-FM to provide expanded service to Roseburg as well as providing news, information and public services to many communities in Douglas and Coos counties not currently receiving its signal. Channel 276C2 can be allocated to Roseburg in compliance with the Commission's minimum distance separation requirements with a site restriction of 24.5 kilometers (15.2 miles) west to accommodate petitioner's desired transmitter site.

2. We believe the public interest would be served by proposing the substitution of Channel 276C2 for Channel 276A at Roseburg since it could provide the community with its first wide coverage area FM service. In addition, we shall propose to modify the license of Station KRSB-FM to specify Channel 276C2 as requested. In accordance with Section 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest in use of this co-channel at Roseburg nor require petitioner to demonstrate the availability of an additional equivalent channel.

3. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Roseburg, Oregon	276A	276C2

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **March 11, 1988,** and reply comments on or before **March 28, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Rainer K. Kraus, Esq.
Peter M. Connolly, Esq.
Koteen & Naftalin
1150 Connecticut Avenue, N.W.
Washington, D.C. 20035
(Counsel to petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See , Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Mark N. Lipp
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-603

In the Matter of

Amendment of Section 73.202(b), RM-6084
Table of Allotments,
FM Broadcast Stations.
(Brownfield, Texas)

NOTICE OF PROPOSED RULE MAKING

Adopted: December 14, 1987; Released: January 19, 1988

By the Chief, Allocations Branch:

1. Brownfield Broadcasting Corp. (petitioner), licensee of Station KKTC(FM), Channel 280A, Brownfield, Texas, filed a petition for rule making requesting the substitution of Channel 282C2 for Channel 280A at Brownfield and modification of its station's license to specify the higher class channel. Petitioner states it will upgrade to a Class C2 operation, if the proposal is adopted.

2. Channel 282C2 can be substituted for Channel 280A in compliance with the Commission's minimum spacing requirements. Petitioner's current transmitter site may not be utilized because of a short spacing to a construction permit for Channel 281C at Carlsbad, New Mexico.

3. In view of the fact that Brownfield, Texas, could receive its first wide coverage area FM station the Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

	Channel No.	
City	Present	Proposed
Brownfield, Texas	280A	282C2

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **March 11, 1988,** and reply comments on or before **March 28, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

James D. Denison, General Manager
Brownfield Broadcasting Corp.
110 S. 5th Street
Brownfield, Texas 79316
(Petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Mark N. Lipp
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-604

In the Matter of

Amendment of Section 73.202(b), RM-6089
Table of Allotments,
FM Broadcast Stations.
(Waynesboro, Tennessee)

NOTICE OF PROPOSED RULE MAKING

Adopted: December 14, 1987 Released: January 19, 1988

By the Chief, Allocations Branch:

1. The Commission has before it for consideration a petition for rule making filed by Pioneer Radio, Inc. (petitioner), seeking the allocation of Channel 235A to Waynesboro, Tennessee, as that community's first FM service. Petitioner, licensee of Station WTNR(AM) at Waynesboro, states its intention to apply for the channel, if allotted.

2. Channel 235A can be allocated to Waynesboro in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.9 kilometers (2.4 miles) south of the city. The site restriction is necessary in order to avoid a short spacing to a proposal to upgrade the facilities of Station WIST(FM), Channel 232A at Lobelville, Tennessee to a Class C2 facility (RM-6114).

3. In view of the fact that Waynesboro, Tennessee, could receive a first FM broadcast service, the Commission believes it is appropriate to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

	Channel No.	
City	Present	Proposed
Waynesboro, Tennessee	---	235A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **March 11, 1988,** and reply comments on or before **March 28, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Eugene F. Mullin, Esquire
Mullin, Rhyne, Emmons and
Topel, P.C.
1000 Connecticut Avenue
Suite 500
Washington, D. C. 20036
(Counsel for petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Mark N. Lipp
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-605

In the Matter of

Amendment of Section 73.202(b), 6037
Table of Allotments,
FM Broadcast Stations.
(Bismarck, Illinois)

NOTICE OF PROPOSED RULE MAKING

Adopted: December 14, 1987 Released: January 19, 1988

By the Chief, Allocations Branch:

1. Before the Commission is a petition for rule making filed by Randolph V. Bell (petitioner), seeking the allotment of Channel 225A to Bismarck, Illinois, as that community's first FM service. Petitioner stated his intention to apply for use of the channel, if allotted.

2. The proposal for Channel 225A at Bismarck meets the spacing requirements of Section 73.207 of the Rules. Thus, in view of the fact that the proposed allotment could provide for a first FM service, the Commission proposes to amend the FM Table of Allotments Section 73.202(b) as follows:

	Channel No.	
City	Present	Proposed
Bismarck, Illinois	—	225A

3. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

4. Interested parties may file comments on or before **March 11, 1988,** and reply comments on or before **March 28, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Randolph V. Bell
4314 Cherry Court
Evansville, Indiana 47715

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

6. For further information concerning this proceeding, contact Montrose H. Tyree, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Mark N. Lipp
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and

Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-578

In re Applications of

CALHOUN COUNTY BROADCASTERS, INC. (hereafter CCBI)	File No. BPH-860902MD
DAYSTAR BROADCASTING NETWORK, INC. (hereafter Daystar)	File No. BPH-860912MA
Ellis J. Parker and Mignon C. Smith dba OXFORD RADIO JOINT VENTURE, AN ALABAMA GENERAL PARTNERSHIP	File No. BPH-860917MB
WOODARD BROADCASTING COMPANY, INC. (hereafter Woodard)	File No. BPH-860918MA
Martis E. Phillips *et al.*, dba MOUNTAIN BROADCASTING, AN ALABAMA PARTNERSHIP (hereafter Mountain)	File No. BPH-860918MC
OXFORD BROADCASTING, LTD. (hereafter Limited)	File No. BPH-860918NA
THOMAS SIMS POTTS (hereafter Potts)	File No. BPH-860918NC
Mavis Gardner, Ronald Windsor and George Salmon dba CHEAHA ASSOCIATES	File No. BPH-860918NF
OXFORD BROADCASTING SERVICE, INC. (hereafter Service)	File No. BPH-860918OM
WILLIAM E. BUSSEY, JR. (hereafter Bussey)	File No. BPH-860918OR
JULIE N. FREW (hereafter Frew)	File No. BPH-860918OX

For Construction Permit
for a New FM Station
in Oxford, Alabama on
Channel 250A (97.9 MHz)

HEARING DESIGNATION ORDER

Adopted: December 15, 1987; Released: January 19, 1988

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *Service*. Service has not certified as to its financial qualifications, stating instead in its response to Section III of FCC Form 301: "Financial qualifications being arranged; certification will be submitted as soon as qualifications established." Since our records show no subsequent amendment on this matter, an appropriate issue will be specified.

3. *Other matters*. The Commission requires that if there will be five or more fulltime employees, the applicant must complete and file Section VI or Form 301, and supply a statement detailing hiring and promotion policies although there may be only a few members of minorities residing within the proposed service area. The guidelines to the Model EEO Program, paragraph IV, instruct the applicant to specify the resources it proposes to use in recruiting minority and female applicants. Neither CCBI nor Service have provided any clearly defined sources for minority and female recruitment in their respective EEO programs. Accordingly, each will be required to amend their applications, within 30 days of the release of this Order, by submitting specific sources of minority and female recruitment to the presiding Administrative Law Judge.

4. Woodard principals Jimmy E. Woodard (75%) and Geraldine S. Woodard (25%) own FM Station WEYY (Talladega, Alabama); Mr. Woodard is sole owner of AM Station WOXR (Oxford, Alabama). The FM transmitters of Woodard's proposed Oxford and the existing Talladega facility are 24.09 miles apart, suggesting the potential for a duopoly overlap prohibited by 47 C.F.R. § 73.3555 (a)(2). In the event of grant of Woodard's application, Mr. and Mrs. Woodard have indicated their their intention to divest themselves of all interest in and sever all connections with WEYY (and WOXR). Similarly, applicant William E. Bussey has indicated that he will resign his management level position with WJSU-TV (Anniston, Alabama) in the event of grant of the proposed Oxford station, which

would lie within the Grade A contour of the Anniston television facility. Accordingly, in the event of grant of either of their respective applications, the principals of Woodard and Bussey will be required to divest themselves of all interest in and sever all connections with the above-noted broadcast stations prior to the commencement of program test authority.

5. Daystar (on January 2, 1987), Woodard (on March 16, 1987), Mountain (on September 24, 1987), Limited (on August 27, 1987) and Potts (on June 15, 1987) have petitioned for leave to amend their applications. The accompanying amendments were filed after November 20, 1986, the last day for filing minor amendments as of right. Under Section 1.65 of the Commission's Rules, the amendments are accepted for filing. However, an applicant may not improve its comparative position after the time for amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed.

6. Since no determination has been received from the Federal Aviation Administration as to whether the antennas proposed by Limited, Bussey and Frew would constitute a hazard to air navigation, an issue with respect thereto will be included and the FAA made a party to the proceeding.[1]

7. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mVm or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to either of the applicants.

8. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

9. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to Service whether, in light of the evidence adduced concerning the deficiency set forth above in this Order, the applicant is financially qualified.

2. To determine whether there is a reasonable possibility that the tower heights and locations proposed by Limited, Bussey and Frew would constitute a hazard to air navigation.

3. To determine which of the proposals would, on a comparative basis, best serve the public interest.

4. To determine, in the light of the evidence adduced pursuant to the specified issue, which of the applications should be granted, if any.

10. IT IS FURTHER ORDERED, That CCBI and Service shall file with the presiding Administrative Law Judge, within 30 days of the release of this Order, an amendment of their respective applications specifying minority and female recruitment sources.

11. IT IS FURTHER ORDERED, That in the event of grant of either Woodard or Bussey's applications, the principals shall divest themselves of all interests in and sever all connections with FM station WEYY (Woodard) and commercial television station WJSU (Bussey) prior to the commencement of program test authority.

12. IT IS FURTHER ORDERED, That the petitions for leave to amend filed by Daystar, Woodard, Mountain, Limited and Potts ARE GRANTED, and the corresponding amendments ARE ACCEPTED to the extent indicated.

13. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

14. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M Street, N.W., Washington, D.C. 20554.

15. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, not later than **February 9, 1988,** file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

16. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

FOOTNOTE

[1] The coordinates listed in Section V-B of Limited's application are 33-36- *37* N. Latitude85-50-50 W. Longitude. In FAA Study 86-ASO-2509-0E, the latitude is listed as 33-36- *27*. Since we have no explanation for the differing coordinates, an air hazard issue will be specified against Limited.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

TRT
TELECOMMUNICATIONS
CORPORATION,
Complainant,

v. File No. E-87-36

TELENET
COMMUNICATIONS
CORPORATION,
Defendant.

ORDER

Adopted December 18, 1987; Released Janurary 19, 1988

By the Chief, Enforcement Division, Common Carrier Bureau:

1. On February 5, 1987, TRT Telecommunications Corporation (TRT) filed a formal complaint against Telenet Communications Corporation (Telenet) alleging that Telenet had entered into an operating agreement with its correspondent in Bermuda, Cable and Wireless PLC, for the provision of packet switched services between the United States and Bermuda that contained a settlement rate that violated the Commission's policy requiring a uniform settlement rate for all United States carriers on parallel international routes. *See* Report and Order in CC Docket No. 85-204, FCC 86-30 (released January 30, 1986). The parties agreed that the matters raised in the complaint by TRT might be more properly considered in the context of a Rule Making proceeding.

2. TRT has subsequently filed such a petition for Rule Making (RM-6179) and the Commission has issued a public notice (released December 15, 1987) soliciting comments from the public on the matters raised by TRT. Thus, the complaint before us is redundant and should be dismissed.

3. Accordingly, IT IS ORDERED, pursuant to authority delegated in 47 C.F.R. § 0.291, that the above-referenced complaint IS DISMISSED without prejudice.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Chief, Enforcement Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-583

In re Application of

DALE A. OWENS File No. BP-830823AE
Tigard, Oregon
Req: 1040 kHz, 250 W, DA-N, U

For Construction Permit

HEARING DESIGNATION ORDER

Adopted: December 23, 1987; Released: January 20, 1988

By the Chief, Audio Services Division:

1. The Commission, by the Chief, Audio Services Division, acting pursuant to delegated authority, has under consideration: (i) the above-captioned application of Dale A. Owens for a construction permit; (ii) a petition to dismiss or deny filed by 1010 Broadcasting, Inc. (1010);[1] and (iii) related pleadings and amendments.[2]

2. *Site Availability.* Owens proposes to locate his transmitter at Tigard, Oregon. 1010 alleges that the proposed site is not available to Owens and relies on a letter from the president of the parent corporation of the site's owner which states that there is no agreement for the purchase, lease, or other use of the Tigard property by Dale A. Owens. To refute this contention, Owens has submitted a document termed an "Exclusive Lease Option Agreement" between Amber Investment Co., the site's owner, and O.N. Communications, Inc. This document is not executed and does not explain the business relationship between Dale A. Owens and O.N. Communications. This ambiguity concerning site availability is accentuated by the long procedural history of the case dating back to 1980. During the pendency of this application, Dale A. Owens changed site proposals several times and eventually relocated the proposal from Beaverton, Oregon to Tigard, Oregon. The case record indicates that on more than one occasion, Dale A. Owens provided inaccurate information concerning the precise location and availability of his previous site proposals in Beaverton, Oregon. Despite the opportunities afforded him by the Commission to clarify previous inaccuracies and to demonstrate unambiguously the precise location and availability of the current proposed site, Dale A. Owens has not done so. In light of this continuing history of ambiguity regarding site availability as reinforced by the above-referenced "lease agreement", an appropriate issue will be specified.

3. *Environmental Impact.* Information provided by both Owens and 1010 indicates that the proposed site lies in a floodplain. Consequently we are concerned that Dale A. Owens may have failed to comply with the newly revised environmental criteria set forth in the *Report and Order* in GEN Docket No. 79-163, 51 Fed. Reg. 14999 (1986). Under the newly revised rules, applicants must determine whether their proposals would have a significant environmental effect under the criteria set out in the newly added 47 C.F.R. Section 1.1307 (Section 1.1307 of the Commission's Rules). If the applications are subject to environmental processing under the Section 1.1307 criteria, the applicants must then submit an Environmental Assessment (EA) containing the information delineated in the newly revised 47 C.F.R. Section 1.1311 (Section 1.1311 of the Commission's Rules). Since the proposal of Dale A. Owens may have a significant environmental impact as defined by 47 C.F.R. Section 1.1307, Dale A. Owens is required to submit the environmental impact information described in 47 C.F.R. Section 1.1311. Accordingly, Dale A. Owens will be required to file within 30 days of the release of this Order an environmental assessment with the presiding Administrative Law Judge. In addition, a copy shall be filed with the Chief, Audio Services Division, who will then proceed regarding this matter in accordance with the provisions of 47 C.F.R. Section 1.1308. Accordingly, the remaining phase of the case will be allowed to begin before the environmental phase is completed. *See Golden State Broadcasting Corp.*, 71 F.C.C. 2d 229 (1979), *recon. denied sub nom. Old Pueblo Broadcasting Corp.*, 83 F.C.C. 2d 337 (1980).

4. *Financial Qualifications.* 1010 also alleges that Dale A. Owens has failed to demonstrate that he is financially qualified to construct and operate the proposed station in Tigard, Oregon. When Owens submitted his initial application for a site in Beaverton, Oregon in 1980 (BP-800418AI), he provided a detailed financial qualifications statement which set forth his anticipated expenses and financial resources. These anticipated expenses are very low (20,748 for the first 90 days of operation,10,470 for construction), particularly in light of the passage of time and subsequent amendments proposing facilities of a more complex and expensive nature. Furthermore, Owens' updated certification of financial qualifications in connection with the Tigard application without a supporting detailed statement is insufficient to make the requisite showing. *See South Florida Broadcasting Co., Inc.*, 94 F.C.C. 2d 452 (1983). Accordingly, an appropriate issue will be specified.

5. Accordingly, IT IS ORDERED, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the application IS DESIGNATED FOR HEARING IN A PROCEEDING to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether Dale A. Owens has reasonable assurance that the site specified in his application will be available to him.

2. If a final environmental impact statement is issued with regard to Dale A. Owens in which it is concluded that the proposed facility is likely to have an adverse effect on the quality of the environment, to determine whether the proposal is consistent with the National Environmental Policy Act, as implemented by Sections 1.1301-1319 of the Commission's Rules.

3. To determine whether Dale A. Owens is financially qualified to construct and operate as proposed.

4. To determine, in light of the above, whether Dale A. Owens is qualified to construct and operate the requested facilities.

6. IT IS FURTHER ORDERED, That 1010 Broadcasting, Inc. IS MADE A PARTY to the proceeding.

7. IT IS FURTHER ORDERED, That the petition to dismiss or deny filed by 1010 Broadcasting, Inc., IS GRANTED to the extent indicated herein and IS DENIED in all other respects.

8. IT IS FURTHER ORDERED, That within 30 days of the release of this Order, Dale A. Owens shall submit the environmental assessment required by Section 1.1311 to the presiding Administrative Law Judge, with a copy to the Chief, Audio Services Division.

9. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M Street, N.W., Washington, D.C.

10. IT IS FURTHER ORDERED, That to avail themselves of an opportunity to be heard, the parties shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, not later than **February 5, 1988,** file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

11. IT IS FURTHER ORDERED, That the parties herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

FOOTNOTES

[1] To the extent that the petitioner raises issues as to the initial acceptance of Dale A. Owens' proposal for 1040 kHz, these issues have already been resolved. *See 1010 Broadcasting, Inc.*, F.C.C. 86-61, 59 R.R.2d 1124 (1986).

[2] Owens' application has undergone numerous amendments since filing, some of which have mooted issues raised in pleadings against it. Accordingly, we consider here only the most current proposal that is now before us and outstanding issues relevant to it.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-597

In the Matter of

Amendment of Section 73.202(b),	RM-5875
Table of Allotments,	
FM Broadcast Stations.	
(Haysville, Indiana)	

NOTICE OF PROPOSED RULE MAKING

Adopted: December 14, 1987 Released: January 20, 1988

By the Chief, Allocations Branch:

1. Pursuant to the request of Martin L. Hensley (petitioner), the Commission has before it for consideration a petition for rule making seeking the allotment of Channel 277A to Haysville, Indiana, as that community's first FM service. Petitioner has stated an intention to apply for the channel if allotted. Our staff engineering study reveals that Channel 277A can be allotted to Haysville consistent with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules.

2. In view of the fact that the proposed allotment could provide a first FM channel to Haysville, Indiana, the Commission proposes to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules for the following community:

	Channel No.	
City	Present	Proposed
Haysville, Indiana	–	277A

3. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

4. Interested parties may file comments on or before **March 14, 1988,** and reply comments on or before **March 29, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Mr. Martin L. Hensley
1655 Olive Street
Evansville, Indiana 47714
(Petitioner)

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

6. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Mark N. Lipp
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in

reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-580

In re Applications of

Community Broadcasting Co., Inc. (hereafter Community)	File No. BPH-860916MD
John F. White (hereafter White)	File No. BPH-860918OB
Colon Johnston (hereafter Johnston)	File No. BPH-860918MO

For a Contruction Permit
for a New FM Station on
Channel 250A in Wiggins, Mississippi

HEARING DESIGNATION ORDER

Adopted: December 21, 1987 Released: January 20, 1988

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *Community*. Community proposes to locate its FM antenna on its existing co-owned WIGG (AM) tower. Our engineering study identifies no existing tower at or within reasonable proximity to the coordinates specified, 30§ 52§ 19" NL, 89§ 09§ 01" WL. The WIGG coordinates as listed in the Commission's files are 32§ 52§ 18" NL, 89§ 09§ 00" WL. Because the applicant clearly proposes to locate on its existing tower, and because specific reference is made to this tower in various places in the application in question, the Commission can, "drawing on the application as a whole", confidently and reliably verify the transmitter site coordinates by taking official notice of the site coordinates found in the Commmission's files for the licensed colocated facilities. Accordingly, the application is found to be acceptable for filing; however, the applicant must submit corrected coordinates.

3. To avert a duopoly problem, Community has indicated that in the event of a grant of the construction permit A.R. Byrd and Gayon Joyce Byrd will sever all connections with WLUN(FM), Lumberton, Mississippi. Accordingly, an appropriate condition will be specified.

4. The applicant(s) below has petitioned for leave to amend its application on the date(s) shown. The accompanying amendment(s) was(were) filed after October 22, 1986, the last date for filing minor amendments as of right. Under Section 1.65 of the Commission's Rules, the amendment(s) is accepted for filing. However, an applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendment(s) will be disallowed.

APPLICANT(S)	AMENDMENT(S) FILED
Johnston	11-13-87

5. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mVm or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

6. Since no determination has been received from the Federal Aviation Administration as to whether the antenna proposed by the applicants below would constitute a hazard to air navigation, an issue with respect thereto will be included and the F.A.A. made a party to the proceeding.

APPLICANT: White

7. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

8. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that the tower height and location proposed by the following applicant would constitute a hazard to air navigation: White

2. To determine, which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted, if any.

9. IT IS FURTHER ORDERED, That Community shall file the corrective coordinates, as specified in Paragraph 2 above, with the presiding Administrative Law Judge within 30 days of the release of this Order.

10. IT IS FURTHER ORDERED, That in the event of a grant of the application of Community, the construction permit shall contain a condition that program tests will not be authorized until the permittee has shown that A.R. Byrd and Gayon Joyce Byrd have divested themselves of all interest in, and severed all connection with WLUN(FM).

11. IT IS FURTHER ORDERED, That the petition for leave to amend filed by the following applicant IS GRANTED, and the corresponding amendment ARE ACCEPTED to the extent indicated herein: Johnston

12. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

13. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

14. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, not later than **February 5, 1988,** file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

15. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In re

Request for Declaratory Ruling

By

Paramount Pictures Corporation,
Cox Broadcasting Corporation,
Taft Television Productions, and
Television Program Enterprises

STAFF RULING

Adopted: January 4, 1988; Released: January 20, 1988

By the Chief, FairnessPolitical Programming Branch:

1. The Commission has before it a request for declaratory ruling, filed by Paramount Pictures Corporation on behalf of a joint venture composed of Paramount, Cox Broadcasting Corporation, Taft Television Productions and Television Programming Enterprises. The joint venture produces Entertainment Tonight (ET) and Entertainment This Week (ETW). It seeks a Commission declaration that appearances by legally qualified candidates on both programs be considered exempt from the "equal opportunities" requirement of Section 315 of the Communications Act, (47 U.S.C. Section 315), under the "bona fide newscast" exemption (47 U.S.C. Section 315(a)(1)).

2. Paramount explains that ET and ETW are respectively 30 and 60-minute programs "in a newscast format, incorporating news interviews, news documentaries, and on-the-spot coverage of entertainment industry news events." ET is aired daily, Monday through Friday, and ETW is an extended version of ET aired once on weekends. According to Paramount, in addition to its regular "up-to-the-minute coverage of late-breaking entertainment news," each program also typically involves investigative news and special reports involving the entertainment industry. Paramount notes that the producers, reporters and editors have news organization backgrounds and that in key respects the behind-the-scenes methodology is essentially the same as more traditional newscast programming.[1]

3. Paramount asserts that the legislative history of the news exemptions and Commission rulings fully support its request. In particular, Paramount emphasizes Congress' intended goal to encourage increased news coverage of political activity when it moved to exempt various categories of bona fide news programming. Paramount also notes that Congress did not define what it meant by news, leaving to the Commission the task of more specifically implementing the generalized categories of exempt programs. In this vein, Paramount cites the Commission's 1984 *Donahue* decision for the proposition that unique and innovative approaches to news programming not necessarily available when Congress amended Section 315 may be treated as exempt. *Multimedia Entertainment, Inc.*, 56 RR 2d 143 (1984). Paramount also cites the only instance in which the Commission granted an exemption to newscast, *Rev. Donald L. Lanier*, 37 FCC 2d 952 (B. Bur. 1972), a program that dealt entirely with religious news. In Paramount's view, no controlling distinction can be made between various "'news' specialties" such as entertainment and religion. Finally, Paramount concludes that the Commission should defer to the good faith news judgments of ET's and ETW's producers to decide the "value of particular news stories for this innovative entertainment news program series."

DISCUSSION

4. In 1959, Congress amended the Communications Act to exempt from the equal opportunities provision of Section 315 appearances by legally qualified candidates during four categories of bona fide news programming.[2] Congress took this action to encourage increased news coverage of political campaign activity.[3] Rather than define precisely what it meant by "news", Congress chose to leave the task of interpreting the scope of each exemption to the Commission.[4]

5. Although the legislative history provides program characteristics for some of the specific exemptions, such as the "regularly scheduled" requirement for the "bona fide news interview" exemption, Congress did not state the characteristics that would qualify a program for the newscast exemption. Furthermore, as noted by Paramount, the Commission has ruled formally only once that a specific program warranted a newscast exemption. *Rev. Donald L. Lanier, supra.* In *Lanier*, the Broadcast Bureau granted the request of a religious programmer to exempt, as a bona fide newscast, a program called "The Church Today," which reported exclusively upon religious news events and stories. The Bureau stated simply that "'The Church Today' program appears to deal with current news regarding events in the field of religion and to fall within the category of a 'bona fide newscast.'" *Id.* In short, neither the legislative history nor Commission precedent provides much guidance with respect to the newscast exemption.

6. Congress has indicated that, as a general proposition, the essential common denominator of all of the exemptions is "bona fide news value."[5] In *Henry Geller*, 95 FCC 2d 1236 (1983), a case involving interpretation of the "on-the-spot coverage of a bona fide news event" exemption (Section 315(a)(4)), the Commission stated: "[T]he term 'bona fide' (which is used to qualify all of the Section 315 exemptions) was intended to emphasize Congress' intent that the programs be of genuine news value and not be used to advance the candidacy of a particular individual." *Id.* at 1243. Congress did not note that bona fide news could be coverage of only certain substantive areas. From a practical standpoint, it would have been impossible for the Congress, just as it would be impossible for this Commission, to compile a list of subject matters beyond which no bona fide news story could be told. Reasonable persons may differ as to the importance or newsworthiness of any topic. Indeed, Commission determinations as to whether particular kinds of news are more or less bona fide would involve an unwarranted intrusiveness into program content and would be thus, at least suspect under the First Amendment. So long as the program characteristics set out by the Congress are met, our role is properly limited to determining whether a broadcaster was reasonable in deciding that a program fits with-

in an exemption. Our role is not to decide, by some qualitative analysis, whether one kind of news story is more bona fide than another.

7. The principal consideration then is whether the format of ET and ETW can be reasonably treated as bona fide newscasts. As explained above, such a determination should not be predicated on the subject matter reported on, but rather should be judged on a basis of whether the program reports news of some area of current events. In this regard, for example, the presentation of skits, dramatic readings, music, comedy, or other forms of pure entertainment would not meet the congressional intention. Our approach seeks to avoid any assessment of the relative merit of the subjects reported on by ET and ETW, and, instead, seeks to determine if these programs report about some area of current events, in a manner similar to more traditional newscasts.

8. There is no indication that either program does anything but report and air commentary concerning current events and stories related to various aspects of the entertainment industry. Paramount indicates that it produces ET and ETW utilizing the same methods and journalistic guidelines typical of traditional newscasting. We also note that, by comparison, the more familiar local and national newscast formats do include news of the entertainment industry, as well as other specialized areas such as business, sports, and religion. An appearance by a legally qualified candidate during these segments of a traditional newscast is as exempt as an appearance in those segments dealing with local, state, national or world events. We cannot properly distinguish those appearances from appearances of candidates during stories aired by ET or ETW.

9. Accordingly, we believe that, in light of the absence of bad faith or unreasonableness, appearances by legally qualified candidates during ET and ETW should be accorded the bona fide newscast exemption. By reaching this conclusion, we are furthering Congress' intent to enhance news coverage of the political arena. Any other result here would thwart that purpose and place the Commission in the inappropriate position of arbitrating the bona fides of news coverage based on content. This Commission possesses neither the expertise nor the desire to take that direction.

10. Staff action is taken here pursuant to delegated authority.

FEDERAL COMMUNICATIONS COMMISSION

Milton O. Gross, Chief
FairnessPolitical Programming Branch
Enforcement Division
Mass Media Bureau

FOOTNOTES

[1] For example, Paramount explains that:

> The credentialing of ET's news gathering staff is handled in the same manner as the credentialing of any other news organization. ET news reports are governed by the "double-source" rule used throughout the journalism field, and an extensive research library is used to crosscheck every statement of fact contained in ET's reports.

[2] Section 315(a) of the Communications Act states, in pertinent part:

> Appearance by a legally qualified candidate on any -
>
> (1) bona fide newscast.
>
> (2) bona fide news interview.
>
> (3) bona fide news documentary (if the appearance of the candidate is incidental to the presentation of the subject or subjects covered by the news documentary), or
>
> (4) on-the-spot coverage of bona fide news events (including but not limited to political conventions and activities incidental thereto),
>
> shall not be deemed to be a use of a broadcasting station within the meaning of this subsection.

[3] The legislative history emphasizes this intention:

> [T]o enable what probably has become the most important medium of political information to give the news concerning political races to the greatest number of citizens, and to make it possible to cover the political news to the fullest degree.
>
> 105 Cong. Rec. 14451 (1959) (remarks of Sen. Holland); *See also* 106 Cong. Rec. 13424 (Pastore).

[4] As the United States Court of Appeals observed in *Chisholm v. FCC*, 538 F.2d 349, 366 (D.C. Cir. 1976):

> In creating a broad exemption to the equal time requirements in order to facilitate broadcast coverage of political news, Congress knowingly faced risks of political favoritism by broadcasters, and opted in favor of broader coverage and increased broadcaster discretion. Rather than enumerate specific exempt and non-exempt "uses", Congress opted in favor of legislative generality, preferring to assign that task to the Commission.

[5] Conference Rep. No. 1069, 86th Cong., 1st Sess. at 4 (1959); 105 Cong. Rec. 14442 (Pastore). *Id.* at 16224 (Brown); *Id.* at 17828 (Pastore); *Id.* at 17777 (Scott).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

WORLDWIDE 800
SERVICES, INC.,
GROUP 800, N.V.,
SERVICE 800, INC., and
SERVICE 800 S.A.,
Complainants,

v. File No. E-87-43

AMERICAN
TELEPHONE and
TELEGRAPH
COMPANY,
Defendant.

ORDER

Adopted January 5, 1988; Released January 20, 1988

By the Chief, Enforcement Division, Common Carrier Bureau:

1. On February 24, 1987, Worldwide 800 Services, Inc., Group 800, N.V.,[1] Service 800, Inc., and Service 800 S.A. (referred to collectively as Worldwide) filed a complaint requesting that the Commission require American Telephone and Telegraph Company (AT&T) to cease and desist from the use of advertisements that foster the misimpression that international toll-free 800 service can only be obtained through AT&T. Worldwide also requested the Commission to order AT&T to correct the false information contained in the advertisements by placing corrective statements in the bills issued to AT&T's international toll-free service customers.

2. The parties have been conducting discussions, including consultation with members of the Enforcement Division, aimed at settling the complaint. A mutually agreeable settlement of all pending controversies between the parties was reached. On December 28, 1987, counsel for Worldwide and AT&T filed a Joint Stipulation of Settlement in the above-referenced complaint and related actions, requesting that the Commission dismiss the complaint with prejudice and terminate the proceeding. We have reviewed the subject agreement and conclude that dismissal of the complaint will serve the public interest by eliminating the need for further litigation and the expenditure of further time and resources of this Commission.

3. Accordingly, IT IS ORDERED, pursuant to authority delegated under 47 C.F.R. § 0.291, that the proposed settlement agreement of the parties IS AUTHORIZED.

4. IT IS FURTHER ORDERED that the joint motion to dismiss the above-referenced complaint IS GRANTED with prejudice.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Chief, Enforcement Division
Common Carrier Bureau

FOOTNOTE

[1] Group 800, N.V., has been dissolved as a corporation and has been withdrawn as a party to this action.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-599

In the Matter of

Amendment of Section 73.202(b), RM-6036
Table of Allotments,
FM Broadcast Stations.
(Anna, Illinois)

NOTICE OF PROPOSED RULE MAKING

Adopted: December 14, 1987; Released: January 20, 1988

By the Chief, Allocations Branch:

1. The Commission herein considers a petition for rule making filed by Union Broadcasting, Inc. (Union), licensee of Station WRAJ(FM), Anna, Illinois, which seeks to substitute Channel 243C2 for Channel 224A and to modify its Class A license to specify operation on the Class C2 channel.

2. Petitioner submitted information in support of the proposal and stated that an upgrade of its facilities would permit Station WRAJ to provide better service to the community and the surrounding area. The allotment of Channel 243C2 can be made in compliance with the minimum distance separation requirements. Petitioner proposes to relocate its transmitter at a site south of the city. A staff engineering study shows that Channel 243C2 could be utilized at a site nearer the city (20.2 kilometers (12.6 miles) southwest of Anna) to avoid a short spacing to Station WDDV(FM), Paducah, Kentucky.

3. In accordance with our established policy, we shall propose to modify the license for Station WRAJ(FM), Channel 224A, to specify operation on Channel 243C2. However, pursuant to Section 1.420(g) of the Commission's Rules, modification of the license may not be implemented if another party expresses an interest in the proposed allotment, unless an additional equivalent channel is available for Anna. *See Modification of FM and TV Station Licenses* 98 FCC 2d 916 (1984).

4. In order to provide Anna with an opportunity for its first wide coverage FM station, the Commission proposes to amend the FM Table of Allotments, Section 73.202(b) of the Rules, with regard to that community as follows:

	Channel No.	
City	Present	Proposed
Anna, Illinois	224A	243C2

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **March 14, 1988,** and reply comments on or before **March 29, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

John Joseph McVeigh
Fisher, Wayland, Cooper
and Leader
1255 - 23rd Street, N.W.
Suite 800
Washington, D.C. 20037
(Attorney for petitioner)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Montrose H. Tyree, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Mark N. Lipp
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the

Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-600

In the Matter of

Amendment of Section 73.202(b), RM-6117
Table of Allotments,
FM Broadcast Stations.
(White Rock, New Mexico)

NOTICE OF PROPOSED RULE MAKING

Adopted: December 21, 1987; Released: January 20, 1988

By the Chief, Allocations Branch:

1. The Commission has before it for consideration the petition for rule making filed by Torjaq Radio, Inc. (petitioner), proposing the substitution of Channel 266C2 for Channel 266A at White Rock, New Mexico. Petitioner also requests that its construction permit (BPH-851213MD) for a new station on the Class A channel at White Rock be modified to specify operation on the higher powered channel. Petitioner states that grant of the requested upgrade would serve the public interest by permitting it to expand the service that it could provide to the White Rock area. Channel 266C2 can be allocated to White Rock in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.5 kilometers (5.9 miles) northeast to avoid a short-spacing to the pending applications for Channel 267A at Albuquerque, New Mexico.[1]

2. We believe the public interest would be served by substituting Channel 266C2 for Channel 266A at White Rock, New Mexico, since it could provide White Rock and its environs with its first wide coverage area FM service. As requested, we shall also propose to modify petitioner's construction permit to specify Channel 266C2 in lieu of Channel 266A. In accordance with Section 1.420(g) of the Commission's Rules, we shall not require the petitioner to demonstrate the availability of an additional equivalent channel nor accept competing expressions of interest in use of Channel 266C2 at White Rock.

3. Accordingly, we hereby seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
White Rock, New Mexico	266A	266C2

4. IT IS ORDERED, That the Secretary SHALL SEND, BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a copy of the *Notice of Proposed Rule Making* to S. Carl Mark Revocable Trust, 2121 S. Yorktown Avenue, 904, Tulsa, Oklahoma 74114, licensee of Station KLVF-FM.

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **March 14, 1988,** and reply comments on or before **March 29, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

David Tillotson
Arent Fox Kintner Plotkin & Kahn
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
(Counsel to petitioner)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See , Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Mark N. Lipp
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

FOOTNOTES

[1] This site restriction does not protect the current operation of Station KLVF-FM, Channel 265A, at Las Vegas, New Mexico, which was recently modified to specify operation on Channel 264C2 by Report and Order, MM Docket 86-312, 2 FCC Rcd 3451 (1987). There is no conflict between the proposed allotment at White Rock and the transmitter site proposed in Station KLVF-FM's pending application (BPH-871020IC).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-606

In the Matter of

Amendment of Section 73.202(b), RM-6023
Table of Allotments,
FM Broadcast Stations.
(Rexburg, Idaho)

NOTICE OF PROPOSED RULE MAKING

Adopted: December 14, 1987 Released: January 20, 1988

By the Chief, Allocations Branch:

1. The Commission considers herein a petition for rule making filed by Tri County Radio Corporation (petitioner), licensee of Station KKQT(FM), Rexburg, Idaho, proposing to substitute Channel 251C2 for Channel 252A at Rexburg, and to modify the Class A license to specify the new channel.

2. Petitioner submitted information in support of the proposal and stated that an upgrade of its facilities would permit an increase in service to a substantial number of persons in the Rexburg area. The allotment of Channel 251C2 to Rexburg can be made in compliance with the minimum distance separation requirements.

3. In accordance with our established policy, we shall propose to modify the license for Station KKQT(FM), Channel 252A, to specify operation on Channel 251C2. Under our current policy, we shall not accept an indication of interest in the Class C2 allotment at Rexburg from other parties. *See* Section 1.420(g) of the Commission's Rules and *Modification of FM Broadcast Licenses to Higher Class Co - Channel and Adjacent Channels*, 51 FR 20290, June 4, 1986.

4. Accordingly, in order to provide Rexburg with its first wide coverage station, the Commission proposes to amend the FM Table of Allotments, Section 73.202(b) of the Rules, with regard to the following community:

	Channel No.	
City	Present	Proposed
Rexburg, Idaho	232A, 252A, 263C1	232A, 251C2, 263C1

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **March 14, 1988,** and reply comments on or before **March 29, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

George M. Frese, P.E.
1010 Dennis Court
East Wenatchee, Washington 98801
(Consulting Engineer)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certificationthat Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Montrose H. Tyree, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Mark N. Lipp
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should

also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-607

In the Matter of

Amendment of Section 73.202(b), RM-6040
Table of Allotments,
FM Broadcast Stations.
(Jesup and Swainsboro, Georgia)

NOTICE OF PROPOSED RULE MAKING AND ORDER TO SHOW CAUSE

Adopted: December 22, 1987; Released: January 20, 1988

By the Chief, Allocations Branch:

1. The Commission herein considers the petition for rule making filed by Bohanan Associated Broadcasters, Inc. (petitioner), licensee of Station WZKS(FM), Jesup, Georgia, which seeks to substitute Channel 252C1 for Channel 252A at Jesup, and to modify its Class A license accordingly. In order to permit the use of Channel 252C1 at Jesup, petitioner has requested that Channel 251A be substituted for Channel 252A at Swainsboro, Georgia, and the license for Station WGKS(FM), Swainsboro, be modified to specify the new Class A channel. Petitioner submitted information in support of its proposal and expressed its intention to apply for use of Channel 252C1 at Jesup.

2. A staff engineering study indicates that both the Jesup and Swainsboro substitutions can be made in compliance with the minimum distance separation requirements. Petitioner's proposed transmitter site for Channel 252C1 at Jesup is 42 kilometers (26 miles) east of the city.

3. We shall propose to modify the license of Station WZKS(FM) to specify operation on Channel 252C1, as requested. In accordance with Section 1.420(g) of the Commission's Rules, we shall not accept other expressions of interest for use of Channel 252C1 at Jesup. *See Modification of FM Broadcast Licenses to Higher Class Adjacent and Co - Channels* MM Docket 85-313, 51 FR 20290, June 4, 1986.

4. We are also issuing a *Show Cause Order* to Radio Station WJAT, Inc., license of Station WGKS(FM), Swainsboro, Georgia, seeking comments as to why its license should not be modified to specify operation on Channel 251A instead of Channel 252A. Commission policy requires that Station WGKS(FM) be reimbursed for the reasonable costs of changing its frequency. Petitioner has stated its willingness to do so.

5. In view of the fact that Jesup could receive its first wide coverage FM station, the Commission proposes to amend the FM Table of Allotments, Section 73.202(b) of the Rules with regard to the following communities:

	Channel No.	
City	Present	Proposed
Jesup, Georgia	252A, 288A	251C1, 288A
Swainsboro, Georgia	252A, 280A	251A, 280A

6. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Radio Station WJAT, Inc., licensee of Station WGKS(FM), Swainsboro, Georgia, Shall Show Cause why its license should not be modified to specify operation on Channel 251A in lieu of Channel 252A.

7. Pursuant to Section 1.87 of the Commission's Rules Radio Station WJAT, Inc., may, not later than **March 14, 1988** file a written statement showing with particularity why its license should not be modified as proposed in the *Order to Show Cause*. The Commission may call on Radio Station WJAT, Inc., to furnish additional information. If Radio Station WJAT, Inc., raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements andor additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, Radio Station WJAT, Inc., will be deemed to have consented to the modification as proposed in the *Order to Show Cause* and a final *Order* will be issued by the Commission, if the abovementioned channel modification is ultimately found to be in the public interest.

8. IT IS FURTHER ORDERED, THAT THE SECRETARY, SHALL SEND, BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a copy of this *Notice of Proposed Rule Making and Order to Show Cause*, to the licensee of Station WGKS(FM), as follows: Cleatus Brazzell, President, Radio Station WJAT, Inc., P.O. Box 289, Swainsboro, Georgia 30401.

9. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

10. Interested parties may file comments on or before **March 14, 1988,** and reply comments on or before **March 29, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Gary S. Smithwick
Baraff, Koener, Olender
& Hochberg, P.C.
2033 M Street, N.W.
Suite 203
Washington, D.C. 20036
(Attorney for petitioner)

11. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the*

Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

12. For further information concerning this proceeding, contact Montrose H. Tyree, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Mark N. Lipp
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-608

In the Matter of

Amendment of Section 73.202(b), RM-6071
Table of Allotments,
FM Broadcast Stations.
(Carlinsville, Illinois)

NOTICE OF PROPOSED RULE MAKING

Adopted: December 21, 1987; Released: January 20, 1988

By the Chief, Allocations Branch:

1. The Commission considers herein a petition for rule making filed by Jerrell A. Shepherd (petitioner), seeking the allotment of Channel 240A to Carlinsville, Illinois, as that community's first FM service. Petitioner stated that he will apply for the channel, if allotted.

2. A staff study reveals that Channel 240A can be allotted to Carlinsville in compliance with the minimum distance separation requirements of Section 73.207 of the Rules.

3. In view of the expressed need for FM service at Carlinsville, we believe it is appropriate to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Rules, with respect to the following community:

	Channel No.	
City	Present	Proposed
Carlinsville, Illinois	–	240A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **March 14, 1988,** and reply comments on or before **March 29, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Jerrell A. Shepherd
P.O. Box 430
300 West Reed
Moberly, Missouri 65270
(Petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Montrose H. Tyree, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Mark N. Lipp
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in

reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-609

In the Matter of

Amendment of Section 73.606(b), RM-6028
Table of Allotments,
TV Broadcast Stations.
(Grenada, Mississippi)

NOTICE OF PROPOSED RULE MAKING

Adopted: December 21, 1987; Released: January 20, 1988

By the Chief, Allocations Branch:

1. A petition for rule making has been filed by J. Boyd Ingram (petitioner), requesting that UHF Television Channel 22 be allocated to Grenada, Mississippi. The allotment could provide a first commercial television service to Grenada. Petitioner has submitted information in support of the allotment and stated his intention to apply for the channel, construct and operate the station without delay.

2. Grenada (population 12,641),[1] seat of Grenada County (population 21,043), is located in northern Mississippi, approximately 170 kilometers (105 miles) north of Jackson, Mississippi.

3. A staff study has found that UHF Television Channel 22 could be allocated to Grenada in compliance with the minimum distance separation requirements of Section 73.610 of the Commission's Rules provided there is a site restriction 20 kilometers (12.5 miles) northeast of the community.[2] The site restriction will prevent a conflict with Station WHLT, Channel 22, Hattiesburg, Mississippi and with Channel *21 (vacant), Clarksdale, Mississippi.

4. Comments are invited on the proposal to amend the Television Table of Allotments, Section 73.606(b) of the Commission's Rules, with respect to the following community:

	Channel No.	
City	Present	Proposed
Grenada, Mississippi	–	22+

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **March 14, 1988,** and reply comments on or before **March 29, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

J. Boyd Ingram
P.O. Box 73
Batesville, Mississippi 38606

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Allotments, Section 73.606(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Mark N. Lipp
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

FOOTNOTES

[1] Population figures are from the 1980 U.S. Census.

[2] Although the Commission has recently imposed a freeze on television allotments in certain metropolitan areas, Grenada is not affected as this proposal is not within the prohibited co-channel distance to any of the specified communities. *See Order,* 52 FR 28346, July 29, 1987.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

GTE MTO, Inc. Request for Waiver
of the Commission's Balloting
and Allocation Procedures

ORDER

Adopted: January 7, 1988; Released: January 21, 1988

By the Chief, Common Carrier Bureau:

1. The Commission, in its *Allocation Order* and its subsequent *Waiver Order* and *Reconsideration Order*,[1] set forth rules and procedures for implementing equal access and presubscription by customers to a primary interexchange carrier (IC). Those Orders provided, *inter alia*, that local exchange carriers (LECs) must send each customer an Equal Access Ballot at least 90 days prior to the date on which the customer's exchange converts to equal access. The ballot, which furnishes the names of the ICs serving that particular exchange, provides an opportunity for the customer to select an IC. Customers who do not select an IC via the balloting process are allocated to an IC based on the procedures set forth in the *Allocation Order*. GTE MTO, Inc. (MTO), on behalf of the former General Telephone Company of Michigan which merged into MTO on March 1, 1987, requests waiver of the Commission's balloting and allocation requirements for the end office of Houghton Lake, Michigan.[2]

2. MTO states that Houghton Lake inadvertently was not converted to equal access at the time that the nearby exchanges of Houghton Point and Prudenville were converted in May 1986. At that time, no balloting was conducted at Houghton Point and Prudenville since only AT&T Communications offered interexchange service to these points. Recently, MTO states, when MCI Communications Inc. (MCI) contacted MTO and indicated its plan to offer long distance service in the Houghton Point and Prudenville exchanges, MTO discovered that the Houghton Lake exchange, with approximately 450 customers, had not been scheduled or converted to equal access.

3. MTO maintains that balloting the customers of the Houghton Lake exchange would be both impractical and confusing, since the customers in the other two exchanges would not have to be balloted. It states that all the ICs which have expressed interest in providing service to these three exchanges have been contacted and have agreed to the immediate conversion of Houghton Lake outside the prescribed balloting and allocation procedures.[3]

4. This Bureau has reviewed MTO's petition and the attached agreements by the ICs to the immediate conversion of the Houghton Lake exchange. We have concluded that good cause has been shown for grant of the requested waiver. We agree that balloting in this single exchange is likely to cause confusion in nearby communities. However, in order to ensure that customers will not be deprived of the opportunity they would have under the regular balloting procedures to select an IC without incurring a penalty or charge, we will require that MTO permit customers in the Houghton Lake exchange to make one selection of an IC without paying the change charge during the six-month period following the date of conversion of the Houghton Lake end office.

5. Accordingly, IT IS ORDERED that the petition for waiver of the Commission's balloting and allocation procedures filed by GTE MTO, Inc. IS GRANTED.

6. IT IS FURTHER ORDERED that customers served by GTE MTO, Inc. in the Houghton Lake, Michigan, end office shall be permitted during the six-month period following the date of the conversion of that end office to make one selection of an interexchange carrier without payment of a change charge.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, 101 FCC 2d 911 (1985) (*Allocation Order), recon. denied*, 102 FCC 2d 503 (*Reconsideration Order*) ; Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, 101 FCC 2d 935 (*Waiver Order*).

[2] MTO Petition for Waiver filed Nov. 30, 1987 (Petition). No oppositions to the waiver petition have been filed.

[3] MTO has attached to its petition letters from AT&T Communications, US Sprint Communications Company, and MCI agreeing to MTO's proposal to convert the Houghton Lake exchange immediately.

Before the
Federal Communications Commission
Washington, D.C. 20554

MCI TELECOMMUNICATIONS
CORPORATION,
Complainant,

v. File No. E-87-146

NATIONAL EXCHANGE CARRIER
ASSOCIATION, INC., *et al.*,
Defendants.

ORDER

Adopted January 12, 1988; Released January 21, 1988

By the Chief, Enforcement Division, Common Carrier Bureau:

1. On July 14, 1987, MCI Telecommunications Corporation (MCI) filed a formal complaint with the Commission alleging that the Adams Telephone Cooperative, the Mount Horeb Telephone Company, and the Ottoville Mutual Telephone Company provided Feature Group C access services to MCI and under the direction of the National Exchange Carrier Association (NECA) improperly billed MCI for these services.

2. The parties have been conducting negotiations aimed at settling the matters in controversy and on January 7, 1988, MCI requested that it be permitted to withdraw its complaint. It appears that the billing problem has been resolved and we therefore find that granting MCI's request would be in the public interest.

3. Accordingly, IT IS ORDERED, pursuant to authority delegated in 47 C.F.R. § 0.291, that MCI's request to withdraw the above-referenced complaint IS GRANTED.

4. IT IS FURTHER ORDERED that NECA's motion to dismiss IS DISMISSED as moot.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Chief, Enforcement Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: January 6, 1988

PARTIES IN PRICE CAP PROCEEDING REQUESTED TO FILE DRAFT RULES IMPLEMENTING PROPOSED PRICE CAP PLANS (CC Docket No. 87-313)

In Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, the Commission currently is considering adoption of a price cap approach to regulating the rates of dominant carriers. Various parties have filed plans proposing to implement the price cap methodology. In order to facilitate review of such plans, and pursuant to 47 C.F.R. § 1.415(d), the Commission is requesting parties who filed specific price cap plans to supplement their submissions with proposed changes to the Code of Federal Regulations that would be required to implement such plans. Parties should submit their proposed rule changes not later than January 27, 1988.

Interested parties may comment on the limited question of whether the proposed rules appropriately implement proposed plans. These comments are due not later than **February 10, 1988,** and replies thereto **February 17, 1988.**

Parties are reminded that seven additional copies of all pleadings in this proceeding must be filed with the Price Cap Task Force, Federal Communications Commission, Room 518, 1919 M Street, N.W., Washington, D.C. 20554.

For further information, contact John Cimko (202) 632-6387 or Regina Harrison (202) 632-6917.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 87-611

In the Matter of

AT&T COMMUNICATIONS Transmittal Nos. 1063 and 1064

Revisions to Tariff
F.C.C. Nos. 1, 2, 11, 13 and 14

MEMORANDUM OPINION AND ORDER

Adopted: December 30, 1987; Released: December 30, 1987

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. On November 17, 1987 AT&T Communications (AT&T) filed the captioned revisions to be effective January 1, 1988. Under Transmittal No. 1063 AT&T proposes rate structure changes and a reduction in rates for its switched services of approximately200 million, to flow through rate reductions for switched access services proposed by the National Exchange Carrier Association (NECA) and the Local Exchange Carriers (LECs) on October 2, 1987.[1] AT&T also states that it will flow through any additional access rate reductions which result from Commission review and action. AT&T has provided an illustrative tariff filing in which it proposes illustrative rate reductions and further rate structure revisions on the assumption that the Commission will require additional access rate reductions totalling600 million. AT&T Transmittal No. 1063, Letter of Transmittal at 1.[2] Transmittal No. 1064 modifies AT&T's rates for Local Channel Services, contained in its Tariff F.C.C. No. 11, to reflect corresponding changes in the LECs' special acccess rates. Transmittal No. 1064, Letter of Transmittal at 1.[3]

2. Four parties have filed comments or petitions concerning AT&T's filing. [4] CDCC and SNET address themselves solely to AT&T's proposed increase in the tax factor used to flow through the Connecticut gross receipts tax to AT&T's customers in Connecticut. New York CPB and US Sprint argue that AT&T's proposed restructuring of its Switched Services rates is not cost based and is unsupported. In addition, US Sprint contends that other deficiencies in the cost support provided with AT&T's filing warrant rejection. These arguments are discussed at paras. 8-18, *infra*.

3. In an Order released December 24, 1987, Annual 1988 Access Tariff Filings, DA 87-1876 (*1988 Access Tariff Order)* the Common Carrier Bureau under delegated authority directed NECA and the LECs to file further reductions in their rates for non-traffic sensitive and traffic sensitive access rates, while suspending many special access rate increases and establishing an investigation. The reductions ordered by this Bureau will total over560 million. When combined with reductions proposed by the LECs in their October 1987 access tariff filings, these further rate cuts ordered by this Bureau are expected to reduce interstate long distance rates by more than750 million.[5] By this Order we are directing AT&T to flow through to its customers the cost savings that it will realize as a result of our action on the access tariffs.

4. In addition, because we conclude that AT&T's filing raises substantial questions as to whether the proposed rates should be reduced still further, and as to the reasonableness of AT&T's proposed structural revisions, we institute an investigation of AT&T's rates in Transmittal Nos. 1063 and 1064.

II. BACKGROUND AND PLEADINGS

A. Proposed Revisions to Rates

5. Although the actual switched service tariff pages filed by AT&T reflect only the200 million rate reduction proposed by the LECs in their original access filings, those specific rate changes have been effectively mooted by this Bureau's *1988 Access Tariff Order*. Evaluation of the illustrative rates is plainly a more meaningful exercise as a result. The rates cited in this Order, unless otherwise noted, are the illustrative rates. Final calculations and revisions of the access rates may alter these figures somewhat, but the substantive issues presented are those presented by the illustrative rates.

6. AT&T proposes non-uniform reductions in its domestic MTS usage rates, reducing the evening and nightweekend discounts from day period rates to 35 and 50 percent, respectively.[6] AT&T states that this proposal would result in reductions in day period usage rates of 6.3 percent and reductions in the evening and nightweekend periods of 2.2 and 0.8 percent, respectively. The average reduction is 3.6 percent. AT&T states that it is driven to make these non-uniform reductions because the day period margin of revenues is too high and the discount period margins are too low to be sustained in a competitive market. AT&T warns that continuation of the present situation will lead to further erosion of its market share and will necessitate increased evening and nightweekend rates. AT&T Transmittal No. 1063, Description and Justification (D&J) at 6-7. AT&T also proposes a variety of revisions to the relationships among rates for its switched services. *Id.* at 10-21. AT&T states that it is making these revisions to maintain the profitability of its switched services as a whole and to minimize "unnecessary and inappropriate customer 'churn.'" *Id.* at 15. In general, AT&T proposes larger rate reductions for other services such as WATS, 800 Service, and Megacom. Rates for these services generally would be reduced by amounts ranging from 4 percent to 6.5 percent. AT&T states that the rate reductions for these services help maintain rate alignment by preserving the price crossover points for cross-elastic services. *Id.* at 13-14.

7. Finally, AT&T proposes revisions to its gross receipts tax flow-through. Specifically, AT&T has adjusted the tax factor applied in four states, has deleted one state from the list of states in which the flow-through is applied, and introduces the flow-through in two jurisdictions. *Id.* at 22-25.

B. Pleadings

1. Petitions

8. US Sprint raises three principal arguments in opposition to the captioned filing. First, US Sprint asserts, the proposed rate restructuring is not cost-based. US Sprint notes that, in contrast with earlier AT&T filings, the pending changes in AT&T's rates are clearly inconsistent with costs. Rates for some services are increasing even though access costs are decreasing, and rates for other services are decreasing even though costs are increasing, US Sprint notes. US Sprint argues that this is unjustified. US Sprint Petition at 5-7. US Sprint argues that AT&T should not be permitted to restructure its Switched Services rates in response to the pending access tariff filing. Rather, US Sprint contends, such a change should be made, if at all, in a separate filing with adequate cost support. *Id.* at 7. In addition, US Sprint argues that AT&T's reliance upon our *May 30 Order* [7] in support of its rate alignment theory is misplaced. US Sprint states that, contrary to AT&T's assertion, that Order did not approve AT&T's theory that maintaining the relationship between AT&T's Switched Services is an appropriate ratemaking objective. Rather, US Sprint contends, that Order merely allowed rate decreases for AT&T's SDN and Megacom services. *Id.* at 7-10. US Sprint contends that if AT&T believes that the Commission's Rules improperly assign costs to the various Switched Services categories then it should file a petition for Rule Making to permit the development of an adequate record. *Id.* at 8.

9. In addition, US Sprint argues that AT&T's claims of deficient margins are insufficient to justify disproportionate rate reductions. US Sprint observes that no information has been provided as to the appropriate margins for each service, nor has AT&T explained why each service should contribute the same absolute margin rather than the same percentage. US Sprint notes that time of day differentials are used to improve network efficiency and AT&T has not demonstrated that its proposed rate structure would produce greater network efficiency than the current one. Further, US Sprint contends, information submitted with the captioned filing is inconsistent with AT&T's statements in previous filings.[8] *Id.* at 11-14.

10. Finally, US Sprint argues that various other cost support deficiencies warrant rejection. US Sprint contends that it is impossible even to verify from AT&T's cost support that200 million is the appropriate reduction.[9] In addition, US Sprint notes that AT&T has failed to provide its demand elasticity coefficient and that AT&T has failed to provide any cost justification for changes to certain non-usage rates. US Sprint also argues that the information provided to support rate revisions for AT&T's Megacom and Pro America services is deficient. *Id.* at 14-17.

11. New York CPB argues that AT&T should not be permitted to confine its rate reductions to the day rate period. New York CPB notes that there is no support in AT&T's D&J for its assertion that its day period profit margins are excessive and speculates that AT&T's proposal may be motivated more by its perception of heightened competition for day period traffic than by cost considerations. New York CPB further asserts that a majority of AT&T's intrastate cost of service is attributable to LEC access charges and observes that the LECs' access costs peak during the day period. New York CPB notes that day-peaking cost characteristics are not reflected in interstate access rates and that this may cause AT&T's cost studies to significantly understate day-period costs. New York CPB urges the Commission to require such cost studies and to direct AT&T to flow its access cost savings through to its customers on an across-the-board basis. New York CPB Petition at 1-2.

12. CDCC and SNET argue that AT&T's proposed increase in the tax factor for Connecticut to 7.33 percent is not justified. CDCC contends that this provision should be rejected or suspended as unreasonably discriminatory in violation of Section 202 of the Communications Act, 47 U.S.C. § 202. CDCC asserts that AT&T's proposed tariff arbitrarily places a heavier tax burden on its Connecticut customers without any consideration of the possibility that the taxes paid by AT&T in Connecticut may be lower on an aggregate percentage basis than the taxes paid by AT&T in other jurisdictions. CDCC also asserts that there is no rational basis for flowing through to customers only one type of tax, *i.e.*, the gross receipts tax. CDCC Petition at 2-4. In addition, CDCC contends that the cost of providing toll service in Connecticut is lower than in other jurisdictions. Finally, CDCC asserts that AT&T's proposed 7.33 percent surcharge will cause AT&T to over-recover the Connecticut gross receipts tax. CDCC states that this tax has not been changed during the past year. CDCC speculates that the explanation for the increase in the tax factor is that AT&T is seeking to collect the Connecticut sales tax through its gross receipts tax factor. CDCC argues that this would be improper because the sales tax is assessed on terminating access and AT&T's Connecticut customers would be required to pay a surcharge on their originating calls to recover this expense. *Id.* at 5-6.

13. Similarly, SNET questions why AT&T is proposing to more than double the gross receipts tax flow-through. SNET argues that the proposed increase will result in a decrease in demand for its traffic sensitive access services and will produce a revenue shortfall of1.5 million to3 million. SNET Petition at 3-4. SNET also states that AT&T has failed to provide any justification for its proposed increase. SNET notes that the proposed rate is more than double the current rate of 3.65 percent and is higher than the tax rate of 6.5 percent charged to AT&T. SNET also observes that AT&T receives a full access charge deduction from its taxable base in Connecticut. Finally, SNET notes that the instant filing contains no assurance that the revenue recovered through the Connecticut gross receipts tax flow-through will be removed from AT&T's revenue requirement and will not be recovered twice. *Id.* at 4-6.

2. AT&T Reply

14. In its reply to the petitions, AT&T asserts that its rate structure revisions and rate adjustments were fully justified in accordance with the Commission's Rules. AT&T contends that its non-uniform rate reductions are reasonable and apply fairly to residential customers. AT&T reiterates that its proposed revisions are necessitated by the current level of the margin in the day rate period. AT&T Reply at 5-6. AT&T asserts that its proposed rates are cost justified, and states that the Commission has repeatedly recognized that non-traffic sensitive (NTS) costs cannot properly be linked with usage in any particular time of day. Rather, AT&T argues, the NTS component of access is a fixed cost which AT&T may allocate among its Switched Services in a manner that promotes economically rational pricing of its services. *Id.* at 8-9.

15. Moreover, AT&T contends, US Sprint and New York CPB are wrong in asserting that residential customers will be disadvantaged by the proposed rate reduction. AT&T notes that approximately one-third of all residential calls are made in the day period and that residential calling accounts for more than 55 percent of MTS usage in the day rate period. AT&T also contends that an across-the-board flow-through would produce only very small additional savings for residential customers. *Id.* at 9-10.

16. AT&T also asserts that it has fully justified the rate level adjustments proposed in its immediate filing as a necessary step to accommodate an across-the-board flow-through of further access rate reductions, including traffic sensitive (TS) access rate reductions. AT&T also contends that the Commission rejected US Sprint's rate alignment theory in the *May 30 Order*. AT&T concludes that it has properly taken into account tne need to maintain consistent overall rate relationships among all of its Switched Services in order to avoid unnecessary customer shifts between services and preserve the economic attractiveness of these offerings. *Id.* at 10-14.

17. AT&T also attempts to rebut the contention of petitioners that it has provided insufficient data to support its proposed tariff revisions. AT&T states that the tariff support described in detail both the rate revisions for each service and the basis of ratemaking for each rate change; showed the demand changes and cross-elastic impact on AT&T's services of the proposed rate changes; described the methods used to determine the financial effects of its proposed rates; and provided cost projections, both for its Switched Services and for the firm as a whole. *Id.* at 14-15. AT&T also contends that it has provided sufficient cost support for its various individual services. *Id.* at 16-19.

18. Finally, AT&T assserts that the increase in the gross receipts tax flow-through for Connecticut is justified. AT&T states that the fact that SNET may experience a revenue shortfall as a result of this revision, even if true, does not render AT&T's proposal unreasonable. AT&T notes that SNET is free to file revisions to its access rates if it anticipates a revenue shortfall.[10] *Id.* at 19-20. Further, AT&T explains, its proposed 7.33 percent tax factor reflects both the gross receipts tax levied by Connecticut on AT&T's Switched Services revenues and the tax expenses which AT&T pays through access charges. AT&T states that it has provided a detailed explanation of the method by which it calculated the level of its tax factor, including its estimate of the projected 1988 gross receipts tax expense which the LECs bundle into interstate switched access charges billed to AT&T. AT&T states that this methodology is consistent with earlier filings which the Commission has permitted to become effective. *Id.* at 20-22.[11] AT&T also asserts that it will not subject its Connecticut customers to double taxation because it has shown in the context of earlier filings that it removed all utility gross receipts taxes or tax expenses from the revenue requirements underlying its service rates. *Id.* at 23-24.

III. DISCUSSION

19. In view of the fact that the AT&T filing represents rate reductions justified by the reduction in the access rates AT&T pays to local telephone companies, suspension or rejection clearly would not serve the public interest. Such actions would only delay or forestall the flow-through of the access rate reductions to telephone succribers. The adjustments to the gross receipts tax surcharges also appear to be justified in principle. A correctly calculated gross receipts tax surcharge equitably assigns the tax burdens imposed by state governments upon the ratepayers of that state, who receive the benefits of that tax.[12]

20. On the other hand, the support material accompanying AT&T's transmittal is so perfunctory and lacking in explanation and justification for its proposed rate levels and changes in rate relationships that we have found it impossible to assess, from the filing, whether AT&T's rates will be reasonable. AT&T does not, for example, provide any explanation of its projected costs and earnings for 1988 and only refers to a past year cost of service study from 1986 as an historical baseline. This information is too out-of-date to be of use in evaluating the proposed rates.

21. This failure to explain, let alone justify, the proposed rates is of particular concern this year because AT&T must implement numerous and substantial changes in the accounting and separations rules.[13] AT&T also benefits from changes in federal income taxes under the Tax Reform Act of 1986.[14] In addition, AT&T will receive refunds from the LECs pursuant to Part 65 of the Commission's Rules. 47 C.F.R. Part 65. Perhaps of greatest importance, AT&T is required to comply with new Commission Rules governing the proper allocation of costs between its regulated and nonregulated activities.[15] In support of their access tariffs, the LECs provided extensive data and support information explaining and justifying their calculations of the effects of most of these changes. AT&T criticized many of the LECs for failing to provide sufficient data to demonstrate compliance with changes in Commission Rules even though each LEC provided more data than AT&T has provided. *See , e.g., 1988 Access Tariff Order* at paras. 48-50. AT&T is required to implement many of the same rule changes, but provides no information on these matters and no justification for the specific rate changes it proposes.

22. We are accordingly concerned that AT&T's rates may be significantly overstated. AT&T projects that it will earn 8.3 percent for the company as a whole under its proposed rates. AT&T Tr. No. 1063, D&J at Figure 4-1.[16] The support material filed on the public record, three pages of highly simplified account statements with no supporting explanation or workpapers, does not explain why such a low level of earnings is to be expected. AT&T has provided some further information by letter in response to a Bureau staff request identifying some of the assumptions used in its projections, *e.g.*, its projections of economic growth and inflation, but these factors do not explain the projected low earnings. AT&T did submit further information which sheds some additional light on the filing. However, this information was submitted on a proprietary basis. This additional submission is not part of the public record and itself raises new questions.

23. In view of these issues and the lack of justification for these proposed rates, we believe that an investigation is necessary to develop information necessary to conclude, on the public record, whether these proposed rates are and will be reasonable, pursuant to Sections 204(a) and 205 of the Communications Act, 47 U.S.C. §§ 204(a), 205. While that investigation will consider whether it is appropriate to prescribe reductions in rates or revisions in the

proposed rate structure, we do not believe the absence of justification warrants imposing prescriptions at this time, as urged by US Sprint and the New York CPB.

24. Under these circumstances, we believe the better course is to allow the proposed reductions to become effective, subject to the condition that the rates fully flow through the access rate reductions, while we proceed with an expedited investigation of whether further reductions or changes in the rate structure should be ordered.[17] To obtain data necessary to evaluate AT&T's filing, AT&T is directed to provide information equivalent to that provided by the LECs as part of the Tariff Review Plans submitted with their 1988 access tariff filings. For the past year cost of service study, AT&T should use calendar year 1987 and for the test year it should use calendar year 1988. It shall also submit, as part of its public direct case, the information provided to the Bureau staff on a proprietary basis.

25. Finally, we wish to emphasize that, although the Commission is currently considering a proposal to revise the existing method of regulating dominant carriers,[18] AT&T is still regulated under rate of return regulation. We expect full compliance with the rules presently in effect. For all of the foregoing reasons, we will institute an investigation of the captioned tariff revisions.

IV. ORDERING CLAUSES

26. Accordingly, IT IS ORDERED that the petitions to reject or suspend and investigate filed by the State of Connecticut Division of Consumer Counsel; the State of New York Consumer Protection Board; Southern New England Telephone Company; and US Sprint Communications Company ARE GRANTED TO THE EXTENT INDICATED HEREIN AND ARE OTHERWISE DENIED.

27. IT IS FURTHER ORDERED pursuant to Sections 204(a), 205, 208, and 209 of the Communications Act, 47 U.S.C. §§ 204(a), 205, 208, 209, that AN INVESTIGATION of the captioned tariff revisions IS INSTITUTED. AT&T Communications is directed to file its direct case, including the information specified herein and any additional or revised information specified in any subsequent Order, no later than January 18, 1988. The schedule for oppositions, comments, and replies will be established in a later Order.

28. IT IS FURTHER ORDERED that the request of the State of Connecticut Division of Consumer Counsel for acceptance of late filed pleading IS GRANTED.

29. IT IS FURTHER ORDERED that Special Permission No. 87-754 is assigned to allow AT&T to file revisions implementing a full flow-through of the access rate reductions no later than noon on December 31, 1987 to be effective January 1, 1988, and Sections 61.58 and 61.59 of the Commission's Rules, 47 C.F.R. §§ 61.58, 61.59, ARE WAIVED.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] The tariffs affected by AT&T's proposed Switched Services revisions are its Tariff F.C.C. Nos. 1, 2, 13 and 14.

[2] AT&T also notes that this filing adds the District of Columbia and Minnesota to the list of states subject to the gross receipts tax flow-through and makes other adjustments to its tariff provisions relating to the flow-through. *Id.*

[3] AT&T states that this filing also updates the information used by AT&T to support the Rate Adjustment Factor (RAF), Lead-Lag Component, and the Billing and Billing Inquiry Charge included in the calculation of AT&T's rates for Local Channel Services. *Id.*

[4] Petitions were filed by the State of Connecticut Division of Consumer Counsel (CDCC); the State of New York Consumer Protection Board (New York CPB); Southern New England Telephone Company (SNET); and US Sprint Communications Company (US Sprint). AT&T has filed a reply to the petitions. In addition, CDCC, which filed its petition two days after the December 2, 1987 deadline for filing petitions against the captioned filing, has requested that its filing nevertheless be accepted. Because we believe that public interest would be served by considering the views of all interested parties, we will gr

[5] *See* FCC News Release, "Commission Review of Telephone Company Filings Is Expected To Produce Long Distance Rate Reductions of More Than 750 Million; An Order Released Today by the Common Carrier Bureau Concludes That Many Proposed Rates Are Too High and Directs Reductions; Other Issues Set for Further Investigation and Suspension," Report No. CC-240, released Dec. 24, 1987.

[6] Currently AT&T's usage rates for calls placed in the evening time period are discounted 38 percent while rates for calls in the nightweekend period are discounted 53 percent.

[7] AT&T Communications, CC Docket No. 86-81, Mimeo No. 4868, released May 30, 1986.

[8] Specifically, US Sprint notes, AT&T stated in support of its November 1986 filing that the absolute level of the day margin was over twice as high as the evening margin. In this filing, AT&T states that its current margin on day traffic is almost three times the absolute levels in the evening and nightweekend periods, despite the fact that AT&T has since been operating under rates ostensibly designed to ameliorate this problem. US Sprint Petition at 13.

[9] US Sprint also argues that the cost support information provided with the instant filing does not demonstrate how AT&T has calculated its Federal Income Tax. US Sprint states that the rate actually used by AT&T is substantially below the 34 percent statutory tax rate. *Id.* at 16.

[10] AT&T also observes that the tax factor was scheduled to increase to 6.83 percent effective January 1, 1988 even if the captioned filing had not been made. AT&T essentially argues that SNET should have set its access rates at approximately the proper level to reflect the proposed tax factor. AT&T Reply at 20 n.**.

[11] AT&T notes that the tax factor exceeds the statutory tax rate because it is designed to recover both the direct tax and indirect tax that AT&T pays through access charges. *Id.* at 23.

[12] We are not persuaded by the CDCC's arguments that the proposed gross receipts tax flow-through is unreasonably discriminatory *per se*. We have not been persuaded by essentially identical arguments in the past. *See* , *e.g.*, AT&T Communications, Inc., Mimeo No. 1287, released Dec. 30, 1986, at para. 25. Moreover, we must agree with AT&T's position that SNET's allegation that it will experience an under-recovery under its filed access rates if AT&T's proposed revised tax factor becomes effective does not

demonstrate that AT&T's proposed charge warrants rejection or suspension. SNET is always free to file tariff revisions if it finds that demand is below its forecast.

[13] *See* , *e.g.*, Revision of the Uniform System of Accounts and Financial Reporting Requirements for Class A and Class B Telephone Companies, CC Docket No. 78-196, 51 F.R. 24745, July 8, 1986, 51 F.R. 43493, Dec. 2, 1986, *recon.*, 2 FCC Rcd 1086 (1987); MTS and WATS Market Structure, CC Docket Nos. 78-72, 80-286 & 86-297, 2 FCC Rcd 2639 (1987).

[14] Tax Reform Act of 1986, Pub. L. No. 99-514, 100 Stat. 2085 (Oct. 22, 1986).

[15] Separation of Costs of Regulated Service from Costs of Nonregulated Activities, CC Docket No. 86-111, 2 FCC Rcd 1298 (1987).

[16] AT&T also filed a proposed increase in its rates for Private Line Service under Transmittal No. 1059. This filing became effective December 27, 1987. The effect of this rate increase is to raise AT&T's earnings for the Private Line category from 3.4 percent to 5.6 percent and to increase earnings for the Interstate Division as a whole to 9.1 percent. AT&T Tr. No. 1063, D&J at Figure 4-3, n.*.

[17] We also note that AT&T has not provided information from which its Connecticut tax liability might be calculated. AT&T is directed to provide specific information and calculations underlying the proposed Connecticut gross receipts tax rate as part of its direct case.

[18] *See* Policy and Rules Concerning Rates For Dominant Carriers, Notice of Proposed Rule Making, CC Docket No. 87-313, 2 FCC Rcd 5208 (1987).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-267

In the Matter of

Review of Technical
Assignment Criteria
for the AM Broadcast
Service

ORDER GRANTING MOTION FOR EXTENSION OF TIME FOR FILING COMMENTS AND REPLY COMMENTS

Adopted: December 11, 1987; Released: December 15, 1987

By the Chief, Mass Media Bureau:

1. On August 17, 1987, the Commission released a *Notice of Inquiry* (*Inquiry*) in MM Docket 87-267 for the purpose of providing a comprehensive review of the technical principles pertaining to AM broadcast assignment criteria and related issues in order to identify needed changes that would permit AM stations to improve their service and enhance their ability to compete in the market place.[1] The deadlines for filing comments and reply comments in this proceeding are currently December 17, 1987 and February 17, 1988, respectively.[2]

2. On December 1, 1987, a motion for extension of these filing deadlines was filed by the National Association of Broadcasters (NAB). The motion requests that the deadline for comments be extended until June 17, 1988 and that the reply comment deadline be extended to August 17, 1988. In requesting a general extension of approximately 180 days, the NAB noted that the Commission may wish to extend by a lesser complement of time the comment and reply comment dates concerning less controversial or less complicated issues raised in the *Inquiry*. [3]

3. In support of its motion for extension of the filing deadlines, the NAB explains that it has undertaken two major technical studies which will provide a meaningful contribution to the record in this proceeding. The completion of these two studies will take several months and their analysis will require additional months of study in order to prepare the comments. The NAB also points to the importance of its Annual Engineering Conference in April of 1988 and the completion of additional work by NRSC in March of 1988 in the development of useful comments in this proceeding. Finally, NAB characterizes the process of improving the AM broadcasting service as "highly detailed and complex" and therefore urges the Commission to extend the deadlines so that the record will be complete and comprehensive.

4. On December 9, 1987, GSM Media Corporation (GSM) filed comments on NAB's motion for an extension of time. GSM agrees with NAB that certain issues addressed in the *Inquiry* do not require extensive research and therefore can be resolved more quickly. GSM contends that there is a need for immediate improvement of the AM service if it is to remain competitive and therefore argues that proposals concerning interference received and new skywave propagation curves should be reviewed and implemented as expeditiously as possible.

5. We agree with NAB's assessment of the complexities of the issues under study in the *Inquiry*. We have been working with the public and the private sector through our Advisory Committee on Radio Broadcasting and we believe that the NAB studies will add to our knowledge and inform our decision making. Furthermore, we agree with both NAB and GSM that certain issues in the *Inquiry* do not require an extended comment period and can be fully addressed without the results of the types of technical studies which the NAB is undertaking. The *Inquiry* is divided into four sections: we feel that Section II - Additional Assignment Considerations and Section III - Related Technical Issues can be addressed by interested commenters within a shortened time frame.

6. Accordingly, IT IS ORDERED THAT the Motion for Extension of Comment and Reply Comment Dates filed by the National Association of Broadcasters IS GRANTED. The dates for filing comments and reply comments on Sections II (Additional Assignment Criteria) and III (Related Technical Issues) of the *Inquiry* are EXTENDED to February 1, 1988 and March 1, 1988, respectively. The dates for filing comments and reply comments on all other sections of the *Inquiry* are EXTENDED as requested to June 17, 1988 and August 17, 1988, respectively.

7. This action is taken pursuant to authority found in Section 4(i) and 303(r) of the Communications Act of 1934, as amended and Sections 0.204(b), 0.283, 1.46 and 1.45 of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION

Alex D. Felker
Chief, Mass Media Bureau

FOOTNOTES

[1] FCC 87-245, adopted July 16, 1987, 2 FCC Rcd. 5014 (1987).

[2] 52 Fed. Reg. 31,795 (August 24, 1987). The current deadlines were established by *Erratum*, released September 3, 1987.

[3] The NAB filed a petition with the Commission on November 6, 1987 requesting the adoption of the 1987 NRSC standard AM preemphasis curve and the standard 10 kHz audio bandwidth. On December 9. 1987, the NAB's *Petition for Rule Making*, RM 6174, went out on public notice and comments are due January 25, 1988. In its public notice releasing the NAB's *Petition* for comment, the Commission took note of the relationship between the issues in the petition and one of the issues raised in the *Inquiry*. The NAB urges in its instant motion for extension of time that this particular matter be expedited.

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 86-497

In the Matter of

Amendment of Part 65 of
the Commission's Rules to
Prescribe Components of the
Rate Base and Net Income
of Dominant Carriers

REPORT AND ORDER

Adopted: December 17, 1987; Released: December 24, 1987

By the Commission:

I. INTRODUCTION

1. In a *Notice of Proposed Rule Making* (*NPRM*) released on January 16, 1987,[1] this Commission proposed to amend Part 65 of its Rules to prescribe rate base and net income determination principles for all dominant carriers.

2. Based on an analysis of the comments received in this proceeding, we have decided to modify the proposals in our *NPRM* as discussed in the succeeding paragraphs. The changes described herein will become effective with the implementation of the revised Uniform System of Accounts (USOA) on January 1, 1988.

II. BACKGROUND

3. This Commission has historically regulated the rates charged by certain carriers providing interstate and foreign telecommunications services. As part of our program of regulating rates, we have adopted rules and policies related to the manner in which carriers calculate their revenue requirements, determine their rate base and recognize allowable expenses. As we stated in our *NPRM*, these areas are crucial to our assessment of a carrier's rates under a rate of return method of ratemaking because the rate of return is multiplied by the rate base to produce the carrier's net earnings requirement and because carriers are allowed to recover their recognized expenses from ratepayers.

4. Prior to the divestiture of the Bell Operating Companies from AT&T, this Commission adopted policies for AT&T to use in developing its rate base and allowable expenses. This Commission's proceeding in Docket 19129 focused on AT&T's rate of return,[2] rate base and allowable expenses. [3] Following the AT&T divestiture on January 1, 1984, this Commission instituted a Rule Making proceeding in Docket 84-800 to examine the procedures and methods for determining the authorized rates of return for the interstate services of AT&T, the Bell Operating Companies (BOCs) and other telephone companies, and to explore possible regulatory changes leading to more individualized prescriptions of rates of return.[4] Docket 84-800 was split into two phases: Phase I dealt with enforcement rules,[5] and Phase II established the procedures for represcribing the target rates of return for AT&T and the exchange carriers.[6]

5. In Phase II of Docket 84-800 this Commission decided that except for their treatment of zero-cost funds, AT&T and the exchange carriers should adhere as closely as possible to the rate base determination principles adopted in Docket 19129 and later modified in Docket No. 79-63.[7] However, while our *Docket 84-800 Phase II Order* adopted a net rate base methodology under which zero-cost sources of capital were to be deducted from the rate base before the calculation of the revenue requirement, it did not provide guidelines for estimating the proportion of zero-cost funds being invested in interstate-related assets. That *Order* also recognized that certain other rate base issues required further investigation. In CC Docket No. 86-127, we decided to deduct interstate portions of zero-cost funds from the interstate rate base.[8] That Order stated that a separate proceeding would be established to address rate base and revenue requirement issues and that our decision on the treatment of zero-cost funds may ultimately be modified.

6. On January 16, 1987, this Commission released the *NPRM* in this docket to develop a coherent set of rate base and net income determination principles. We stated that the principles developed should possess the following three important characteristics: 1) they should properly balance the interests of ratepayers and investors; 2) they should consolidate and refine the rate basenet income principles previously established by this Commission and incorporate any new principles necessary to reflect properly the current telecommunications industry environment; and 3) they should be as uncomplicated as possible--easy to understand, apply, and administer. The focus of the *NPRM* was not on generating an entirely new set of rate base and net income inclusion principles but, rather, on updating, clarifying and consolidating these established principles, on simplifying them and applying them to all carriers subject to our Part 65 Rules.

III. SUMMARY OF PROPOSAL

7. In developing our proposal, we were guided by two historically applied principles--the "used and useful" standard and the benefit-burden test. The "used and useful" standard denotes property dedicated to the efficient conduct of a utility's business, presently or within a reasonable period. That standard reflects the principles that owners of public utilities must receive an opportunity to be compensated for the use of their property in providing a public service and that ratepayers must not be forced to pay a return on investment that does not benefit them directly. The benefit-burden test is based on the principle that the party who bears the financial burden of a particular utility activity should also reap the benefits resulting therefrom. We proposed to apply these two general principles to specific assets and asset categories established in Part 32 of our Rules, which will become effective January 1, 1988.[9]

8. In our *NPRM*, we proposed specific ratemaking treatment for telecommunications plant, materials and supplies, noncurrent assets, prepayments, zero-cost funds and cash working capital. We also proposed ratemaking treatment for expense accounts and other operating income and expense accounts. In addition to inviting comments on

each of our proposals, we also invited interested persons to suggest reasonable alternatives which reflect the historical needs of carriers and which would not be unduly burdensome

9. Since the *NPRM* was issued in this proceeding, new rules for separation of costs of regulated telephone service from costs of nonregulated activities were released.[10] Generally, these rules provide, inter *alia*, for the segregation of telephone service cost from services that have been preemptively deregulated or have never been regulated. Remaining telephone costs and revenues are then separated between intrastate and interstate jurisdictions. We are concerned here with rate base and income and expense items recognized for rate purposes in the interstate jurisdiction. We assume for purposes of this proceeding that revenues, assets and expenses that are attributable to unregulated activities and intrastate regulated activities have already been excluded.

10. Interested parties were invited to file comments on or before March 17, 1987, and reply comments on or before April 1, 1987. Comments were received from 23 parties and reply comments from 11 parties.[11]

11. All commenting parties except one contend that the standards proposed in the *NPRM* should be modified. The commenting parties differ, however, as to the extent of changes needed. The following paragraphs summarize the ratemaking treatment we proposed for each specific asset or other category and the comments we received on that particular item.

IV. RATE BASE

A. Plant Accounts

12. In the *NPRM* we proposed to include in the rate base the interstate portions of assets summarized in Account 2001, Telecommunications Plant in Service; Account 2002, Property Held for Future Use; and Account 2003, Telecommunications Plant Under Construction-Short Term. Interstate portions of accumulated depreciation and amortization related to amounts included in the rate base would continue to be deducted to arrive at a net interstate rate base. We proposed to exclude from the rate base interstate portions of assets summarized in Account 2004, Telecommunications Plant Under Contstruction-Long Term; Account 2005, Telecommunications Plant Adjustment;[12] Account 2006, Nonoperating Plant; and Account 2007, Goodwill.

1. Account 2001 Telecommunications Plant-in-Service

a. Positions of the Parties

13. *Capital leases*. The telecommunications plant-in-service category has traditionally been included in the rate base. However, at the time of the *Docket 19129 Phase II Decision*, this category did not include capital leases. Since 1976, the capitalization of leases meeting specific criteria has become a common practice in the American business community.[13] Some leases are capitalized because a lease that transfers substantially all of the benefits and risks of ownership should be treated as the acquisition of an asset and the incurrence of a liability by the lessee. Generally speaking, an asset and liability is recorded at an amount equal to the present value of minimum lease payments during the lease term.

14. All parties support the inclusion of capital leases in the rate base. BellSouth and other respondents state that this proposal is consistent with generally accepted accounting principles. AT&T states that our proposed treatment properly recognizes that a capital lease is effectively a purchase of plant financed by the lessor. Arizona, while not opposed in general to the inclusion of capital leases in the rate base, is not convinced that inclusion of capital leases is appropriate in all instances, and would prefer to decide the issue on a case-by-case basis. Arizona urges that we specifically declare that the states are free to consider the inclusion of capital leases in the rate base on a case-by-case basis. Arizona's reluctance to endorse the inclusion of all capital leases in the rate base is based on its unwillingness to increase a company's rate base and allow a return on these leases without examining the alternatives to capital leases, and the financial impact each such lease may have on the utility.

15. *Sale - leasebacks*. While we tentatively concluded that capital leases of operating property should be included in the rate base, we also tentatively concluded that in sale-leaseback arrangements any excess of the present value of future lease payments over the original carrying cost of assets on the books of the lessor company should be treated in the same manner as purchased assets. The excess would be recorded in Account 2005, Telecommunications Plant Adjustment and excluded from the rate base.

16. Several parties disagree with our proposed ratemaking treatment of capital leases involving sale-leaseback arrangements. AT&T, BellSouth, Contel, NYNEX, the Pacific Companies, SNET, USTA, and U S West state that the capital lease part of sale-leaseback arrangements should be treated in the same manner as other capital leases. They claim that if the treatment we propose were adopted, there would be two rate-base deductions that are largely duplicative--one for the profit on the sale to the lessor and one for the excess of the present value of the capitalized lease over the book cost of the asset. AT&T contends that this would result in an understatement of the rate base and would deny the carrier an opportunity to earn a return sufficient to cover the future lease payments. AT&T states that carriers would have no incentive to enter into sale-leaseback transactions even when such transactions would provide a low cost source of financing, and ratepayers would be denied the potential benefits of sale- leaseback arrangements. The Pacific Companies claim that this Commission should treat the sale and the lease parts of a sale-capital leaseback as two separate transactions for ratemaking purposes. Pacific states that once the ratepayers have received the benefit of the gain on the initial sale, there is no justification for treating a capital leaseback differently from any other capital lease. USTA states that the excess of the present value of future lease payments over the original carrying cost of the assets on the books of the company, less any capital gain realized on the sale of the asset, or any gain credited to the depreciation reserve, should be recorded as a telecommunications plant adjustment. USTA also says that this Commission should consider the treatment of embedded leases. USTA claims that the accounting treatment of embedded leases should be consistent with Part 32, and become effective contemporaneously with Part 32. The MPSC Staff agrees with our proposal that sale-leaseback transactions be given treatment similar to purchased assets.

17. In reply comments, BellSouth, NYNEX and USTA reiterate that our proposal for sale-leaseback arrangements should be rejected because, in their view, it would create a clear double-count, in effect giving ratepayers double benefit of the gain from the transaction. To avoid such double-counting, NYNEX claims that the excess of the present value of future lease payments over the original carrying cost should be adjusted for any gain credited to the depreciation reserve on the sale of depreciable plant, or gain realized on the sale of nondepreciable plant. In its reply comments, ICA warns that sale-leaseback transactions could operate to the detriment of ratepayers when conducted with affiliated entities. ICA is concerned about the impact such transactions could have on the utilities' net plant rate base if the present value of the capitalized leaseback were greater than the net book cost of the asset in the rate base at the time of sale. ICA claims telephone utilities' sales to, and leasebacks of assets from, their own nonregulated entities may be conducted in a less-than-arms length manner. ICA contends that the capitalization of the lease cost could be inflated in a manner that would equate the economic value of the transaction improperly, just as would an initial sale transaction at less than fair market value. For this reason, ICA says it agrees with our proposal that sale-leaseback arrangements should be subject to different accounting treatment than ordinary capital leases. ICA states that there should not be any double-counting of the gains properly allocated to ratepayers with respect to such transactions. ICA believes that it is not appropriate to account for the effects of the difference between the sale price of an asset transferred in a sale-leaseback arrangement and its original cost merely by an adjustment to the depreciation reserve of the utility, or to Account 4360, Other Deferred Credits. ICA states that the accounting for the effects of sale-leaseback arrangements using Account 2005 is appropriate and that the other treatments noted in the initial comments should not be allowed.

b. Discussion

18. *Capital leases*. In earlier orders relating to the accounting practices we prescribed for telecommunications common carriers in Part 32,[14] we concluded that capital lease transactions should be recorded as the acquisition of an asset with the incurrence of a related liability. When leases convey substantially all of the risks and rewards of ownership to the lessee, we believe such treatment is appropriate. We see no reason to depart from that course for rate base determination purposes.

19. Among the commenting parties, only Arizona failed to completely endorse the inclusion of capital leases in the rate base. Arizona would prefer to examine alternatives to capital leases on a case- by-case basis and requests a specific declaration that states are free to do so. Such a declaration is unnecessary because we are adopting rules for interstate ratemaking.

20. Beginning January 1, 1988, under our accounting rules in Part 32, carriers will begin recording capital leases as assets consistent with generally accepted accounting principles. This accounting will also apply to embedded leases which qualify as capital leases. The embedded leases, however, will be adjusted to the present value of future lease payments as follows. The embedded capital leases shall be recorded in Account 2681, Capital Leases, at their original capital lease value. The difference between the periodic lease payments to January 1, 1988, and the amount of the interest expense that would have been recorded had the lease been capitalized at its inception will be recorded in Account 3410, Accumulated Amortization-Capital Leases. The adjusted amount will then represent the present value of future lease payments as if the lease had commenced on January 1, 1988. Thus, embedded leases and new leases will be treated the same and differing treatment of similar transactions will be avoided.

21. *Sale - leasebacks*. Having tentatively concluded in the *NPRM* that capital leases are analogous to purchases, we proposed that such capital leases be treated in the same manner as purchased assets. When the lease price (present value of future lease commitments) exceeds the original carrying cost, the excess would not be included in the rate base. That proposed rate base exclusion would prevent a carrier from increasing its rate base by selling the asset and leasing it back at a higher cost.

22. Commenting parties have suggested that we either treat the sale and leaseback as separate transactions or treat the sale-leaseback as a single transaction but adjust the carrying value of the capital lease to reflect any gain on the sale. The first alternative creates a culture for precisely the kind of situations we were seeking to avoid when assets are sold and leased back at a higher cost. Upon closer review of the mechanical aspects of the proposal, we have concluded that when the sale involves a gain that benefits ratepayers, we will require any gain on the sale to be recorded in Account 4360, Other Deferred Credits, and amortized as a reduction to expenses over the life of the lease . While recorded in Account 4360, this amount will be treated as a rate base deduction. In the case of assets depreciated on a group basis, the proceeds of the sale are recorded as a credit to the depreciation reserve, which serves as a reduction to the rate base. This will ensure that the value of the capital lease in the rate base will never exceed the old carrying value. We believe this is preferrable to the treatment we orginally proposed because it is consistent with generally accepted accounting principles and results in fair and equitable treatment.[15]

2. Account 2002, Property Held for Future Use and Account 2003, Telecommunications Plant Under Construction-Short Term

a. Positions of the Parties

23. No party objected to including in the rate base assets recorded in these two accounts, which were included in the rate base in the *Docket 19129 Phase II Decision*.

b. Discussion

24. In the *Docket 19129 Phase II Decision*, this Commission decided that property held for future "imminent use" in telecommunications service should be included in the rate base because such acquisitions in advance of actual use enable carriers to take advantage of cost saving opportunities and thereby ultimately lower the cost of service to ratepayers.[16] The standard imposed for imminent use was two years.[17] The *Docket 19129 Phase II Decision* also concluded that projects with short construction lives (less than one year) should be included in the rate base.[18] We shall carry those practices forward into our Part 65 rules.

3. Account 2004, Telecommunications Plant Under Construction-Long Term

a. Positions of the Parties

25. Twelve parties[19] disagree with this Commission's proposal to exclude from the rate base amounts recorded in Account 2004, Telecommunications Plant Under Construction-Long Term. These parties believe that all telecommunications plant under construction should be included in the rate base. Ameritech states that ratepayers and investors would be disserved by the exclusion of plant under construction-long term from the rate base. Ameritech claims: 1) plant under construction benefits current ratepayers; 2) the proposed exclusion cannot be reconciled with this Commission's rules; 3) excluding plant under construction increases the carrier's revenue requirements and, thus, rates paid by customers; and 4) in light of the Tax Reform Act of 1986,[20] our proposal would result in current ratepayers paying higher rates.

26. Ameritech says that 99% of all construction projects are completed within four years. It claims that one cannot meaningfully distinguish between benefits to "present" ratepayers and "future" ratepayers from such projects. Ameritech states that the proposed exclusion of long- term construction projects is inconsistent with this Commission's practice of including property held for future use (Account 2002) in the rate base. It claims that this Commission's reason for including plant held for future use--"acquisition in advance of actual use lowers the ultimate cost of service to ratepayers"--applies with equal force to plant under construction. Ameritech states that Allowances For Funds Used During Construction (AFUDC) is not an adequate substitute for including plant under construction in the rate base; and it contends that over the long term, the addition of AFUDC to the rate base creates greater risk for investors and, thus, a higher cost of capital.[21] Ameritech also states that this Commission's proposed exclusion of plant under construction-long term from the rate base would result in both present and future ratepayers' paying higher rates. Ameritech claims this is due to the fact that the Tax Reform Act of 1986 requires that interest related to construction be capitalized rather than expensed for tax purposes. This eliminates timing differences that had been used to reduce revenue requirements of current ratepayers. Our new Part 32 Rules, which become effective January 1, 1988, require normalization accounting for tax timing differences associated with any construction period interest that remains deductible for tax purposes. Ameritech states that because of these changes, the present value of the revenue requirements over the life of the asset would increase compared to the pre-Tax Reform Act treatment and Part 31 accounting rules. Arthur Andersen believes that it would be appropriate to include such balances in the rate base rather than postponing recovery through the capitalization of AFUDC in many situations. Arthur Andersen claims that current inclusion in the rate base increases a company's current cash flow and coverage ratios. Arthur Andersen states that with the potentially severe impact on cash flow of the Tax Reform Act, it would seem particularly appropriate at present to consider modification of this Commission's present flat denial of any inclusion in rate base of telecommunications plant under construction-long term. Should this Commission decide against including all plant under construction in the rate base, USTA and several others recommend changing the current one year boundary to two years.

27. The MPSC Staff and Western Union agree with this Commission's proposal to exclude long-term plant under construction from the rate base. Western Union also disputes the position of some of the carriers that all plant constructed within two years should be categorized as short-term investment. Western Union states that this Commission's decision in Docket 19129 to distinguish between short-term and long-term construction projects remains valid, and provides compensation to the BOCs' investors while not burdening current users for the high cost of investment which has not been, and may never be, placed in service. Western Union also contends that the carriers have not shown that they need relief in reducing their financing costs, or have been unable to finance new equipment. It states that the one-year period for short-term plant under construction guarantees that all such plant will become part of the rate base within a year, and any plant built for ratepayers will be included in access charges. MCI also believes that long-term plant under construction should be excluded from the rate base. However, MCI suggests that this Commission investigate the issue of whether revenue requirements would be reduced as a result of the change in the federal tax treatment of interest charged to construction.

b. Discussion

28. The *Docket 19129 Phase II Decision* concluded that public interest considerations required a distinction between current and future ratepayers[22] and that long term projects are not "used and useful" for communications services.[23] While determining that current ratepayers should not bear costs that benefit future shareholders, this Commission found that AFUDC was an appropriate mechanism for compensating investors during the construction period before the project enters the rate base.

29. In support of its claim that all plant under construction benefits ratepayers, Ameritech cited a study, which contained a simulation model involving electric utilities.[24] In essence, the study concludes that: AFUDC adds to the rate base and exacerbates existing capital recovery problems; it has a negative impact on cash flow because costs of raising capital are lower when a utility is allowed to earn a cash flow on plant under construction; and the customer pays lower rates over the life of the plant, since rate base is not permanently increased by the amount of the financing costs that accrue during construction.

30. The question of including long-term plant under construction in the rate base was examined at length in the *Docket 19129 Phase II Decision*. That decision represents an appropriate balance of incentives for companies to complete construction projects in a timely manner and compensates investors for funds used during the construction period. We are not persuaded that the study cited by Ameritech, if applied to the telecommunications industry, would produce the same results. Electric utilities customarily have longer lead times in placing plant in service. Longer lead times ordinarily result in more AFUDC dollars being added to the rate base. Even Ameritech's comments indicate that expanding the "short term" category from one year to two years would encompass 93 percent of all of its construction projects. In contrast, the model in the study cited by Ameritech shows lead time of 5 years.[25] In addition to our doubts about the applicability of the study to this industry, we agree with Western Union's comment that carriers have not shown a need for relief in reducing their financing costs.

31. Ameritech also alleges that the exclusion of long-term plant under construction from the rate base cannot be reconciled with our other rules. According to Ameritech, the one year term for distinguishing long- term and short-term plant under construction is inconsistent with our policy of including property held for future use. Ameritech says the rationale for including property held for future use for up to two years applies with equal force to plant under construction. We do not agree. Property held for future use consists mainly of land and buildings which can produce savings depending on the timing of the purchase. In the *Docket 19129 Phase II Decision* we were persuaded that exclusion of property acquired for future use from rate base might discourage carriers from taking advantage of possible savings. In contrast, excluding plant under construction from the rate base provides an incentive to complete projects more quickly. Thus the purpose for including property held for future use in the rate base and excluding long-term plant under construction are not the same.

32. We are also not convinced that the changes made by the Tax Reform Act of 1986 should compel us to depart from the formula we adopted in the *Docket 19129 Phase II Decision*. Although several parties agreed with Ameritech's arguments, no party quantified the effect such a change would have on revenue requirements. Ameritech did provide an example of the revenue requirement effect. However, in reviewing the Ameritech example, we have concluded that varying the assumptions significantly affects the estimated changes in revenue requirements. After considering the present value factor and the actual savings which result from the reduction in the tax rates, we are unable to make any firm determination of the exact benefits that will accrue to ratepayers if our *Docket 19129 Phase II Decision* treatment of plant under construction were to be changed. Absent more compelling evidence to the contrary, we have decided to refrain from changing our rate base treatment of telephone plant under construction.

4. Account 2005, Telecommunications Plant Adjustment

a. Positions of the Parties

33. Three parties commented on our proposal to exclude Account 2005, Telecommunications Plant Adjustment from the rate base absent a specific showing justifying that amounts recorded in this account should be included. This exclusion is intended to prevent inflation of the rate base resulting from sales of property at a value higher than the original cost carried in the rate base of the selling carrier.

34. Ameritech claims that the automatic exclusion of Account 2005 from the rate base is bound to work to the ratepayers' detriment. It contends that purchasing property from another carrier in excess of that carrier's net book cost may well be less expensive than purchasing similar new property from a non-carrier. Ameritech states that this Commission's proposal creates an incentive for a carrier to purchase new property to avoid the automatic disallowance that denies investors any return on a portion of their investment. Ameritech claims that amounts in Account 2005 attributable to purchases from unaffiliated carriers should be included in the rate base and all amounts with respect to purchases from affiliated carriers should be included to the extent the purchases were approved by either this Commission or a state commission. NTCA claims that our proposed treatment for Account 2005 may hurt small carriers. NTCA states that small carriers make acquisitions which amount to a substantial percentage of their rate base. NTCA states that if a small carrier acquires another carrier or a portion of a carrier whose plant is substantially depreciated, but whose fair market value is equal to the purchase price, the small company will be at risk that a very large proportion of its rate base could be disallowed. NTCA contends that this situation puts small companies at a disadvantage compared to large companies in negotiations to acquire attractive properties, because the seller will not want to deal with a buyer which needs a long-term contingency. NTCA states that large companies can afford the occasional risk that this Commission may disallow the acquisition because the amount will usually be a small percentage of their total rate base. NTCA suggests that the special needs of exchange carriers with less than 50,000 access lines per study area be considered in determining eligibility for inclusion of Account 2005, Telecommunications Plant Adjustment.

b. Discussion

35. Ameritech's comments assume an automatic exclusion of Account 2005 from the rate base. We believe Ameritech's assumption does not place this aspect of our *NPRM* in the proper context. In the *NPRM*, we indicated that Account 2005 would be excluded; but by allowing carriers to properly justify what should be included in the rate base, we acknowledged that there would be exceptions to this rule. We would of course allow carriers to include in the rate base amounts included in Account 2005 to the extent such inclusions have been allowed by this Commission under Section 221(a) of the Communications Act (47 U.S.C. 221(a)).

36. As we stated in our *Docket 19129 Reconsideration Order* "regulatory bodies have long recognized that acquisition by one utility of the property of another utility presents the possibility for abuse, or at least confuses the question of the proper value to be placed on such property for ratemaking purposes. For this reason, inclusion of such amounts must be determined on a case-by-case basis and in this connection, it is reasonable to require the acquiring carrier to show how the public who is to be charged a return on investment will benefit from the acquistion and, particularly, that the price paid for property accurately reflects its value."[26] We do not agree with the comments of NTCA, which suggest that the special needs of exchange carriers with less than 50,000 access lines per study area be considered in determining eligibility for inclusion of the Telecommunications Plant Adjustment. While we are not insensitive to the needs of small carriers, the primary purpose for the exclusion of Account 2005 is to protect the ratepayers. We believe that our determination should not depend on the relative size of the carrier making the acquisition but, rather, on the benefit that will flow to the ratepayers. We will therefore adopt this policy for all dominant carriers, as originally proposed.

5. Other Plant Account Matters

a. Positions of the Parties

37. BeliSouth, NYNEX and SNET state that Accounts 2682, Leasehold Improvements, and 2690, Intangibles, should be included in the rate base. NYNEX observes that leasehold improvements have been included in the rate

base in the past and contends that we should continue to include leasehold improvements. NYNEX also claims that intangibles appear to be the type of assets that should be included.

b. Discussion

38. Accounts 2682, Leasehold Improvements, and 2690, Intangibles, will be included in the rate base. Leasehold improvements historically have been recorded in Account 212, Buildings, under Part 31 and comprise a part of the old Account 100.1, Telephone Plant in Service. Similarly, Account 2690, Intangibles, includes organizational and incorporation costs, franchises, and patent rights which were also included under Part 31 in Account 100.1.

B. Materials and Supplies

1. Positions of the Parties

39. Our proposed treatment of Account 1220.1, Material and Supplies, was a continuation of the approach we adopted in the *Docket 19129 Phase II Decision*.[27] Materials and supplies that exceed an adequate inventory for maintaining existing plant would not be included in the rate base. We also proposed that materials and supplies held for construction of new plant be excluded from the rate base because inclusion of such materials and supplies would stretch the concept of used and useful beyond its reasonable meaning. Under our proposal, material and supplies actively used in construction projects would be accorded the same rate-base treatment as the projects themselves and each carrier would be required to provide sufficient information for us to separate material and supplies into the relevant categories before any related costs would be included in its rate base.

40. Ameritech, BellSouth, U S West, the Pacific Companies, Cincinnati Bell, SNET, USTA and Arthur Andersen disagree with this Commission's proposal for the treatment of material and supplies. Ameritech states that the Commission-prescribed accounting system does not distinguish between material and supplies held for long-term construction projects and material and supplies held for other purposes. Ameritech claims that exchange carriers have no ready way of making that distinction. BellSouth contends that materials and supplies connected with long-term construction should be included in the ratebase. BellSouth believes that the requirement to segregate materials and supplies by the type of construction project is unduly burdensome. BellSouth claims that it is in the interest of both carriers and ratepayers to include all materials and supplies in the rate base, thereby eliminating the need to identify and track these assets prior to their use in a construction project. BellSouth states that if this Commission elects to continue its present treatment for materials and supplies associated with long-term construction projects, it should permit interest during construction to be capitalized on such assets. Arthur Andersen says that under this Commission's new Uniform System of Accounts, AFUDC can be capitalized only on amounts in Account 2004, Telecommunications Plant Under Construction-Long Term. Arthur Andersen states that to the extent this Commission does not allow amounts in Account 2004 in the rate base and instead capitalizes AFUDC on such amounts, the balance in material and supplies applicable to such long term construction would neither be included in the rate base nor included in the AFUDC base and investors would be denied a return on their capital invested in such material and supplies. Arthur Andersen claims that material and supplies must either be included in the rate base or, as a less desirable alternative, be included in the base on which AFUDC is capitalized. The MPSC Staff, however, agrees with this Commission's proposal to continue to exclude material and supplies held for construction in the rate base. In its reply comments, USTA states that all material and supplies should be included in the interstate rate base and that, in lieu of full inclusion, costs associated with construction, should follow the projects. USTA claims that the administrative costs of separation alone outweigh the value of making distinctions for material and supplies.

2. Discussion

41. Most parties did not agree with our proposal to include in the rate base only material and supplies needed for maintaining existing plant and short-term plant under construction. We believe that current ratepayers should bear some of the burden of maintaining an adequate inventory of material and supplies for routine maintenance and repairs of telephone equipment, and for short-term plant under construction. However, we do not believe that current ratepayers should bear the burden of material and supplies held for construction of long-term projects. We believe that the allowance for materials and supplies should be for the maintenance of service and not for some undefined future construction use. As we stated in our *Docket 19129 Phase II Decision* [28] allowing materials and supplies in the rate base that are held for long-term construction would appear to stretch the concept of "used and useful" beyond its reasonable meaning, and thus be contrary to judicial and administrative precedent. Under our approach, material and supplies to be used on construction projects which are to be completed within one year would be included in the rate base at the time the items become identified with the project--either at the time construction begins or when they are acquired for a project already underway. Material and supplies which are used on construction projects not completed within one year are not to be included in the rate base until such projects are placed in service. When material and supplies are used in a long-term construction project they should be accorded the same treatment as the project itself. That is, such material and supplies should be cleared to plant under construction, with AFUDC accrued at the compounded prime rate, until such time as the entire construction project, including accrued AFUDC, is placed in service.[29] Our primary concern here is to avoid any incentive for carriers to buy and hold materials and supplies that have no definite use. We are not departing from our rate-base treatment of material and supplies used in our *Docket 19129 Phase II Decision*. If some exchange carriers are having problems in making the distinction between material and supplies held for long-term construction projects, and material and supplies held for short-term projects and maintenance of service, these problems should be corrected immediately.

C. Other Noncurrent Assets

1. Positions of the Parties

42. *Noncurrent Assets.* In the *NPRM* we tentatively decided that investments in affiliated and nonaffiliated companies and in nonregulated assets (Part 32, Accounts 1401, 1402 and 1406, respectively) do not meet the "used and useful" standard and therefore should not be included in the rate base. We proposed that other noncurrent assets be included in the rate base only if this Commission had expressly allowed them in earlier proceedings. In its comments, USTA claims that our proposed treatment of noncurrent assets is not sufficiently defined to permit a carrier to know its limits. USTA states that this Commission should identify or list the items previously allowed so that there will be a clear understanding of what is and is not proposed for inclusion. USTA also contends that while it supports the proper separation of nonregulated costs from regulated costs, it would not be appropriate to adopt a rule which flatly denies the opportunity to justify inclusive treatment in the future. USTA states that it would be better for this Commsssion to indicate that individual situations that arise in the future will be evaluated on a case-by-case basis. Arthur Andersen disagrees with our proposal to include only those noncurrent assets which we had previously included in the rate base. Arthur Andersen states that if the noncurrent assets are related to the provision of regulated telecommunications service and are financed by investor capital, such assets should be included in the rate base. In its comments, the MPSC staff agrees with our proposal, and states that it is consistent with the procedures recently adopted in our *Docket 86 - 111 Order* for the separation of costs of regulated telephone service from costs of nonregulated activites.

2. Discussion

43. We have decided to exclude any portion of investments in affiliated and nonaffiliated companies and nonregulated investments recorded in Accounts 1401, 1402, and 1406, respectively. Any other course would be inconsistent with our efforts in Docket 86-111 to segregate regulated from nonregulated investments. We will hold to the *Docket 19129 Phase II Decision* with respect to other nonregulated assets and its application of the "used and useful" principle. We will allow deferred charges related to non-capital equal access costs[30] and pension fund payments in excess of expenses recognized for regulatory purposes.[31] Thus, other noncurrent assets recorded in Account 1410, Other Noncurrent Assets; Account 1438, Deferred Maintenance and Retirements; and Account 1439, Other Deferred Charges, will generally be excluded unless some showing can be made that they are "used and useful" in the provision of telecommunications services.[32]

44. We do not believe our action here results in the flat denial of an opportunity to justify inclusive treatment in the future, as USTA suggests. Nor does it exclude items that are related to the provision of regulated telecommunications services, as Arthur Andersen contends. We believe our position here strikes a reasonable balance between the interests of ratepayers and investors.

D. Prepayments

1. Positions of the Parties

45. We proposed to exclude prepayments from the rate base because we believed they failed the "used and useful" test and were not considered to be capital items on which carriers should be allowed a rate of return. Carriers would be allowed to recover prepayments as they were amortized. Ameritech, Bell Atlantic, BellSouth, the GTOCs, NYNEX, the Pacific Companies, USTA and Arthur Andersen all disagree with our proposed treatment for prepayments. USTA states that prepayments should be included in the interstate rate base when they are reasonably intended to provide a net benefit to the ratepayer. USTA claims that prepayments are an example of an item that does not easily fit the traditional "used and useful" criteria. It states that prepayments have been taken into account previously in cash working capital accounts and included in the lead-lag studies. USTA contends that certain prepayments have clearly provided a net benefit to ratepayers in terms of cost savings and should therefore be included in the interstate rate base. NYNEX states that prepayments should be included in the rate base inasmuch as they are usually controlled by governmental authority or by economic circumstances, which leave no other efficient alternative. NYNEX claims that failure to include prepayments in the rate base would unfairly penalize the carriers for making prudent business decisions, or for complying with governmental regulations. Although SNET objects to our application of the "used and useful" standard to such non-asset based items as prepayments, it believes that prepayments could be excluded from the interstate rate base if the USTA working capital formula were adopted, since that proposed formula takes into consideration the extent to which expenses in advance of revenues are included in working capital. The MPSC staff agrees with our proposal to continue to exclude prepayments from the rate base.

2. Discussion

46. The majority of the parties disagree with our proposed treatment of prepayments, particularly if we ultimately decided to rely on historical cash balances as an alternative to a cash working capital allowance. As will be discussed in succeeding paragraphs, we have decided to continue to rely on a cash working capital allowance based on lead-lag studies, which take prepayments into account. Since prepayments will be considered in the lead-lag studies, we will exclude prepayments from the rate base. We believe that from an accounting viewpoint, the prepaid accounts appear as a transfer between asset accounts (from cash to prepaid expenses) and, as such, they are more appropriately treated as a component in developing the allowance for working capital, until they are ultimately recognized as an operating expense in the period they benefit.[33]

E. Rate Base Deductions

1. Deferred Taxes

a. Positions of the Parties

47. In the *NPRM*, we proposed to deduct an interstate share of deferred taxes from the interstate rate base.[34] Arthur Andersen states that it agrees with the deduction of deferred taxes from the rate base to the extent such deferred taxes arose from timing differences related to property included in the rate base. NYNEX states that it does not oppose deducting Accounts 4100 and 4340 from

the rate base. However, NYNEX believes that Accounts 4110 and 4350 should not be treated as deductions from the rate base because these deferred tax amounts are not related to any item included in the rate base. Moreover, NYNEX states that the interstate ratepayer did not pay regulated rates reflecting such deferred taxes as current tax amounts. NYNEX contends such deferred taxes were generated by activities not regulated by this Commission and, therefore, should not be treated as rate base deductions to be applied against regulated services.

b. Discussion

48. It was evident from the comments that parties view our intention to deduct deferred taxes as being disproportionate to amounts included in the interstate rate base. We have concluded that such a situation would result if nonoperating deferred taxes, current and noncurrent, were deducted from the interstate rate base. Since these items are not related to items included in the rate base, our deduction for deferred taxes will be limited to the interstate portions of Account 4100, Net Current Deferred Operating Income Taxes and 4340, Net Noncurrent Deferred Operating Income Taxes. We will adopt the course proposed in the *NPRM* to require the interstate portion to be determined based on the interstate plant factor.

2. Other Deferred Credits

a. Positions of the Parties

49. We recommended that Account 4360, Other Deferred Credits, be deducted from the rate base. Arthur Andersen states that it agrees with this deduction only to the extent such deferred credits clearly are applicable to regulated telecommunications service and only if deferred charges and prepayments are included in the rate base. NYNEX states that our proposal to deduct Account 4360 from the rate base creates an incongruity by proposing that Account 1439, Deferred Charges, which in many respects is the "left hand side of the balance sheet" equivalent of Account 4360, be specifically excluded from the rate base. NYNEX contends that this represents an inequitable treatment of related items with the "cost" amount excluded from the rate base and the "benefit" amount treated as a rate base deduction.

b. Discussion

50. In the earlier discussion of Noncurrent Assets, we indicated that other deferred charges, except for deferred equal access costs, would generally not be included in the rate base unless some showing could be made that such deferred charges are "used and useful" in the provision of telecommunications services. We therefore see no inconsistency in our continued belief that insofar as deferred credits arise from the provision of telecommunications services, an appropriate interstate share of these deferred credits should be deducted from the interstate rate base, and we will incorporate this into our final rules. The interstate share shall be determined using the interstate plant factor as originally proposed.

3. Accounts Payable, Advance Billing and Payments, Drafts Outstanding and Accrued Taxes

a. Positions of the Parties

51. In addition to deferred taxes and other deferred credits, the *NPRM* identified several other sources of funds that provide capital at "zero cost" to investors. We proposed to deduct these items from the rate base because we decided to refrain from adjusting capital cost calculations to reflect zero cost funds in the *Docket 84 - 800 Phase II Order*. That *Order* adopted a net rate base methodology, deducting zero cost sources of capital from the rate base before the calculation of the earnings requirement. In addition to the deferred taxes and deferred credits we proposed to deduct the following: unmatured interest and dividends (included in Account 4120); accounts payable (Account 4010); advance billings and payments (Account 4030); customer deposits (Account 4040); accrued taxes (Account 4070 and 4080); and drafts outstanding (included in Account 4020). We also proposed that the intrastateinterstate portions of zero-cost funds be defined as being proportionately the same as the intrastateinterstate portions of telephone plant-in-service and that the proportionate share of interstate zero-cost items would be deducted from the interstate rate base.[35]

52. Ameritech states that many of the items we have identified as zero-cost rate base deductions would normally be reflected in a lead- lag study. Ameritech claims that if the cash working capital allowance is based on an underlying lead-lag study or a surrogate methodology for such a study, any deduction from the rate base would amount to an impermissible double deduction of the same item. AT&T agrees with Ameritech and states that our *NPRM* fails to recognize that certain current liabilities such as accounts payable, advance billings and payments, drafts outstanding, and accrued taxes would ordinarily be fully reflected as a reduction of the rate base in calculating the allowance for cash working capital. AT&T claims that the same current liabilities cannot be considered as sources of funds to finance current operations and then be considered as sources of funds available to finance plant. Arizona also does not believe that items such as accounts payable and advance billings and payments are appropriately characterized as zero-cost funds since, unlike deferred taxes, these are short-term items that are more appropriately considered in a cash working capital calculation.

53. *Advance Billings and Customer Deposits*. NYNEX questions our assumption that these funds are available to interstate operations in the same proportion as telecommunications plant in service. NYNEX claims that while this may be appropriate with respect to some sources of zero-cost funds, it is not appropriate to all. As an example, NYNEX states that virtually all advance billing is related to intrastate operations and therefore the proportion of telecommunications plant in service is unrelated to the jurisdictional assignment of these funds. Ameritech also states that several deductions such as advance billings and customer deposits relate primarily to intrastate services and, therefore, are not properly deducted from the interstate rate base in an amount equal to the interstateintrastate telephone plant in service ratio.

54. Bell Atlantic states that customer deposits cannot be deducted from the rate base as zero-cost funds unless carriers are allowed to recover the interest they pay on those deposits as an allowable expense. It claims that this Commission must either provide for the recovery of interest paid on customer deposits, or eliminate the deduction of customer deposits from the rate base as zero-cost funds. Even though it agrees with Bell Atlantic, Arthur Andersen

also believes that it would be more appropriate to include interest on customer deposits in the capital cost calculation since such deposits do not ordinarily represent zero-cost sources.

55. ICA contends that except for unmatured interest and dividends, the treatment we proposed for the remainder of the accounts is appropriate and in no way prejudices the utilities' shareholders. For example, ICA claims that interest on customer deposits becomes part of the utility revenue requirement when paid and the fact that interest may be paid is irrelevant to the capitalization issue. ICA also states that the interstate allocation rule proposed in our *NPRM* should be adopted because no party demonstrated it was inadequate. ICA believes, however, that carriers should be allowed to justify any disproportionate allocation of items such as advance billings for state-tariffed services.

56. *Unmatured Interest and Dividends.* Ameritech states that several proposed zero-cost deductions are not zero-cost, but reflect investor-supplied funds. As an example, Ameritech cites unmatured interest and dividends. Ameritech claims there is no reason in economic logic or common sense why investors should not expect and demand a return on invested capital until that capital is payable to them. Arthur Andersen states that accrued interest should be considered as a part of the working capital study if consideration is also given to the investor capital needed to finance the delay in the collection of the total accounts receivable balance. Arthur Andersen contends that it is wrong to deduct accrued dividends from the rate base. It states that amounts in retained earnings are clearly invested capital. It claims declarations causing the transfer of amounts from retained earnings to accrued dividends do not convert such amounts to a non-investor source of capital. Because these funds are invested capital, Arthur Andersen believes they should be allowed to earn a return. ICA believes that above-the-line treatment of unmatured interest and dividends will emulate accounting practices of non-rate base regulated firms, and for this reason, it is preferable to the rate base reduction we proposed in the *NPRM*.

b. Discussion

57. We proposed many of the rate base changes for zero-cost funds because we also proposed to eliminate lead-lag studies to determine cash working capital. Since we have decided to modify our proposal for cash working capital, our proposal for zero-cost sources of capital will also be modified. We have already decided in earlier paragraphs to deduct the interstate share of deferred taxes related to telecommunications operations and deferred credits arising from telecommunications services. We will not require deductions for accounts payable (Account 4010), advance billing and payments (Account 4030), drafts outstanding (included in Account 4020) and accrued taxes (Accounts 4070 and 4080). We will, however, require these items to be taken into consideration in the lead-lag studies required of larger carriers.

58. *Advance Billings and Customer Deposits.* Advance billings and payments, as short-term liabilities, are not dissimilar from any other short-term liability and it would therefore be appropriate to consider these billings and deposits with other like items in lead-lag studies for the development of interstate cash working capital. In the development of those lead-lag studies for the purposes of developing interstate cash working capital requirements, carriers should also develop appropriate relationships between advance billings for interstate and intrastate services. The *Docket 19129 Phase II Decision* concluded that customer deposits are not an investor supplied source of funds on which a return is due. However, costs associated with customer deposits were to be recognized as operating expenses. We shall continue that course in rules we adopt here and this should eliminate the concerns expressed by commenting parties that they were denied both the opportunity to earn a return and recognition of the costs associated with the customer deposits. Like deferred taxes and other deferred credits, the interstate share will be determined using the interstate plant factor. Where specific attributions can be made for customer deposits, we will accept this split based on a special study.

59. *Unmatured Interest and Dividends.* Unmatured interest is an amount recognized on a monthly basis that will become payable at a future payment date. It measures, at a particular point in time, the current obligation which would be due creditors if the current obligation were to be paid at that point in time. It is not, in this sense, dissimilar from other payables, which we have directed to be taken into consideration in the lead-lag studies for the determination of an interstate cash working capital allowance. We will accordingly require similar consideration of unmatured (accrued) interest in the lead-lag studies.

60. In connection with dividends, most commenting parties express the view that investors should receive a return on invested capital until that capital is returned to the investor. The *Docket 79-63 Decision* concluded that this item is a zero-cost item. The rationale for treatment as a zero-cost item was articulated as follows:

> At the moment that AT&T's Board of Directors declares a dividend payable, and a corporate liability is created thereby, the corporation continues to retain the use of those funds until the checks representing those dividends have actually been deducted by AT&T's banks from its checking accounts. During that time interval, AT&T is not required to pay additional interest or additional dividends on the amount of dividends payable which has been declared, and therefore has the interest free use of those funds until AT&T's banks reduce AT&T's checking accounts by the amount of the dividends payable.[36]

61. Upon closer scrutiny, and in light of the comments we have received, we have concluded our proposal to reduce the interstate rate base by the interstate share of these items is inequitable. Under our proposal shareholders would not be allowed a return in the current period so long as these funds are at the disposal of the carrier. We agree with Arthur Andersen, Ameritech and other commenting parties that the mere declaration of an intended distribution does not change the nature of this item to a non-investor supplied source of funds. We will therefore not require deduction of an interstate portion from the interstate rate base as originally proposed.

F. Cash Working Capital

1. Positions of the Parties

62. In an effort to minimize or eliminate entirely the need for lead-lag studies,[37] we proposed permitting a cash working capital allowance using a historical base that reflected the individual characteristics of the carrier subject to our rate-base determinations. We proposed that carriers be allowed an initial cash working capital allowance for 1988 based on their respective average interstate cash balances for the five calendar quarters ending June 30, 1986. The proportion of total cash balances assigned to interstate services would be determined by the proportion of interstate operating expenses (exclusive of depreciation) for the same period. We invited comments on this method and on the appropriateness of the base period. In addition, we sought suggestions for alternative methods for determining cash working capital.

63. *Historical Cash Basis.* Arizona, the MPSC Staff, NTCA and U S West support our proposal to permit determination of a cash working capital allowance on a historical base. U S West states that there is no reason to believe that a carrier's average cash balance is not a reasonable surrogate for the result of a lead-lag study. U S West claims that the use of average cash balances obviates the need for consideration of "sources" and "uses" of funds. Arizona believes that the simplified cash working capital method proposed in the *NPRM* is a feasible one. However, it states that certain lag items have been ignored in the proposal, which will have the effect of misstating the company's financial posture unless they are included in the rate base. Arizona claims that if a lead item is removed from the rate base to reflect the early receipt of funds, then consistency would call for the inclusion of lags to reflect the receipt of funds after the provision of service.

64. COMSAT supports this Commission's proposal to eliminate the need for lead-lag studies and agrees that cash balances can provide a reasonable estimate of cash working capital. COMSAT believes, however, that this Commission should clarify that "cash balances" includes both cash on hand and cash equivalents. COMSAT states that if this Commission should ultimately decide against using cash balances to estimate working capital, it suggests an alternative approach previously employed by the Federal Energy Regulatory Commission (FERC) of using an allowance equal to 45 days operating expense.

65. *Formula Approaches.* USTA submitted a formula approach as an alternative to our proposal, which applies a weighted revenue lag day factor to interstate operating expense. Some parties suggest application of the FERC method of using an allowance equal to 45 days operating expense.[38] Ameritech, Bell Atlantic, Cincinnati Bell, Contel, SNET, Southwestern Bell and United support the USTA cash working capital formula. Ameritech claims that USTA's formula approach meets this Commission's objective of being "easy to understand, apply, and administer." In addition, Ameritech states that the USTA formula is flexible enough to adapt to changing industry conditions and can be updated inexpensively. Bell Atlantic claims the USTA formula can be employed by all local exchange carriers, both large and small, without being unnecessarily burdensome. It contends that the USTA approach offers significant benefits over the complex lead-lag approach currently used and avoids the problems with the approach proposed in the *NPRM.* Bell Atlantic states that the major problems with this Commission's proposal are: 1) it would deny investors any return on the funds advanced to prepay expenses and taxes; 2) it takes into account the liability side of the balance sheet but does not reflect the asset side; and 3) it does not apply consistent separations factors. Bell Atlantic supports the simple uniform approach proposed by USTA. However, in lieu of USTA's formula approach, Bell Atlantic states that this Commission can still accomplish its objective by adopting a simplified lead-lag study such as the one proposed in its comments. The Bell Atlantic alternative would develop one composite expense lag thereby eliminating the most burdensome aspects of a lead-lag study. Directory expenses, revenue related accounts, and tax related accounts would be studied separately.

66. The GTOCs also recommended a simplified formula approach for calculating cash working capital. The GTOCs' simplified formula approach would permit a company to include a standard fractional amount of its annual operating expenses as cash working capital. The GTOCs state that normally this would be 18 of annual operating expenses, which is the equivalent of 45 days of operating expenses. They claim that the cash balNPRM should be rejected because it does not approximate cash working capital requirements. The GTOCs contend that the cash balance approach would produce skewed results by including in the rate base cash, but not accounts receivable, while excluding accounts payable. They state that the cash balance approach would penalize efficient cash management and be subject to influence by the timing of company transactions. The GTOCs also believe that lead-lag studies and the balance sheet approach should be rejected. The GTOCs claim that lead-lag studies are not simple or understandable or easy to administer. They contend that they would create heavy costs and burdens for carriers required to initiate such studies. The GTOCs also believe that the balance sheet approach does not identify the company's day-to-day working cash requirements and would involve serious allocation problems. ICA states that the comments have adequately demonstrated that alternative measurements for calculating cash working capital can be utilized. However, ICA claims that any formula methodology should be rigorously scrutinized by this Commission to ensure that only operating expense outlays are included in surrogate lead-lag analysis.

67. *Support for Lead-lag Studies.* AT&T, BellSouth, NYNEX and the Pacific Companies support the use of lead-lag studies. NYNEX states that lead-lag studies are the most appropriate method to determine the interstate cash working capital requirement. BellSouth claims that a properly developed lead-lag study represents the best method to develop a working-capital requirement that is fair to both ratepayers and investors. BellSouth recognizes that lead-lag studies are complex, but the Bell companies have been performing such studies since divestiture and most large carriers perform such studies for intrastate ratemaking purposes. Thus, there is little additional burden on carriers to produce a lead-lag study for submission to this Commission. BellSouth states, however, that if every exchange carrier is required to submit a lead-lag analysis, there could be a substantial burden on the resources of the smaller carriers and this Commission. If some carriers do not wish to undertake a full lead-lag analysis, BellSouth proposes an alternative simplified formula approach for determining cash working capital, which considers the delay in the receipt of interstate revenue from customers. The Pacific Companies propose that each local exchange company be able to determine a methodology most appropriate to meet its individual cash

working capital requirements. AT&T states that this Commission should make it clear that regardless of the alternative we adopt, AT&T may continue to use lead-lag studies to determine its cash working capital requirements for ratemaking purposes.

68. In reply comments, AT&T states that the proposed formula alternatives to lead-lag studies are conceptually invalid and would improperly inflate the rate bases of the Local Exchange Carriers (LECs). AT&T claims that the USTA formula and the 45 day lag formula are incapable of accurately measuring the cash working capital required by the LECs, and both would substantially inflate the LECs' rate bases. AT&T contends that the fundamental fallacy of the USTA formula is that it takes into account only the revenue lag and completely ignores the lag in the payment of expenses that offsets the revenue lag to produce the net lag, which is the relevant figure for determining cash working capital requirements. The USTA formula assumes that there is no lag whatever in the payment of expenses. AT&T claims this is an obviously incorrect and unrealistic assumption. AT&T also states that the 45 day lag formula is arbitrary and unsupportable for application to this industry. Based on data from recent annual access tariff filings, AT&T states that the actual net lag experienced by the BOCs determined using the lead-lag methodology averaged about 14 days. Thus, AT&T claims the 45 day lag formula would approximately triple the amount of the BOCs' net lag days with a corresponding substantial increase in the amount of cash working capital included in their rate bases. AT&T contends that no alternative approach to the measurement of cash working capital has been suggested that is as reliable as the lead-lag study. AT&T believes that no sound reason exists why the BOCs should not be required to continue using lead-lag studies, but acknowledges that developing and performing lead-lag studies might impose undue burdens on small LECs. AT&T suggests that one alternative would be to allow the smaller LECs to use the proposed USTA formula corrected to take into account the lag in the payment of expenses. AT&T states that the need to compute an actual expense lag could be obviated, however, by allowing the smaller LECs to use the average expense lag calculated in the BOCs' lead-lag studies. AT&T claims that if any new alternative is permitted for the smaller LECs it should be closely monitored to ensure that it is producing reasonable results.

69. U S West believes that it should not be required to perform lead-lag studies simply because other carriers wish to do so. U S West claims that the regulations should be flexible enough to recognize distinctions among carriers. Western Union states in its reply comments that the most accurate method of determining working capital requirements is a lead-lag study and that the alternative working capital proposals of the LECs should not be adopted. Western Union believes that: 1) there is very little likelihood that a uniform formula would produce reliable results; 2) any simplified formula must, at a minimum, take taxes into account; and 3) any formula that uses a fixed number of days' cash expenses should use no more than 20, if it is to be consistent with the historical data. Western Union contends that if this Commission implements any simplified formula, it should require the carriers to submit for comparison their lead-lag studies as well as the calculations under the formula. Western Union also believes that the LECs should not be given the option of using lead-lag studies or a formula. It claims that such an option would give carriers who have a high lead-lag ratio an incentive to use the studies and would give others an incentive to use the formula.

2. Discussion

70. In the *NPRM*, we recognized that lead-lag studies were likely to produce the most accurate assessments of cash working capital needs. Nevertheless, prompted by a desire to minimize burdens on carriers, we proposed an alternative based on historial cash balances. We also invited commenting parties to suggest other alternatives that would be consistent with our stated objective to simplify, whenever possible, our rate base measurements. Comments suggested several alternatives to our proposal for cash working capital. After reviewing the alternatives, including our own historical base approach, we have decided to continue relying on lead-lag studies for all large carriers because it produces more accurate results and does not appear to be unduly burdensome for this group. Small carriers will be permitted to use the formula approach suggested by USTA but will be required to adjust for lags in the payment of expenses.[39]

71. USTA proposed a formula approach for determining cash working capital, which applies a weighted revenue lag day factor to operating expenses. BellSouth, Bell Atlantic, COMSAT, NYNEX,[40] and the GTOCs also recommended simplified formulas for determining cash working capital. Even though each of the alternatives may be easy to understand, apply, and administer, we do not believe they would be as reliable as the lead-lag study. The major weakness with USTA's proposed formula is that it fails to take into consideration the lag in the payment of expenses that offsets the revenue lag. We believe that ignoring the lag in the payments of expenses is an unrealistic assumption to make in determining cash working capital requirements. We believe that the other formulas proposed are likely to overstate the rate base of the LECs. We consider the 45 day lag approach as too arbitrary. We believe that each of these alternatives would substantially increase the amount of cash working capital included in each LEC's rate base. As AT&T stated in its reply comments, the actual net lag experienced by the BOCs determined using the lead-lag methodology averaged about 14 days. Thus, the 45 day lag approach would triple the amount of the BOCs' net lag days and result in a corresponding increase in the amount of cash working capital. We believe that such a substantial increase outweighs the benefits of adopting these formula approaches. As AT&T, BellSouth, NYNEX and the Pacific Companies have indicated, we believe properly developed lead-lag studies are the most appropriate method for determining the interstate cash working capital requirements. For this reason, we also reject the BellSouth recommendation to include consideration of non-cash expenses, and the Bell Atlantic recommendation which relies on a composite expense lag. As BellSouth notes, the BOCs have been performing such studies since divestiture and since most large carriers perform such studies for intrastate ratemaking purposes, there is little additional burden on these carriers to produce a lead-lag study for submission to this Commission. This does not hold true for the small carriers. Because of the costs and burdens associated with developing and performing lead-lag studies, we will not require lead-lag studies from the smaller carriers. Instead, we will permit the smaller carriers to use the USTA formula for cash working capital but we require it be modified to take into

account the lag in the payment of expenses. We believe that this approach will produce reasonable results and keep the burden on smaller carriers to a minimum. Finally, we do not agree with the Pacific Companies' proposal that each local exchange company be permitted to determine a methodology most appropriate to meet its individual cash working capital requirements. We agree with Western Union that a carrier should not be given the the option of choosing its own methodology for calculating working capital requirements. If we did, carriers would have the incentive to use the methodology which gave them the most favorable results. Carriers with a high lead-lag ratio would use lead-lag studies and those with a low lead-lag ratio would use the some other more favorable alternative. For the sake of accuracy and consistency, all large carriers will be required to use lead-lag studies.[41]

V. NET INCOME ISSUES

72. The *NPRM* proposed to retain the treatment of expense accounts in our *Docket 19129 Phase II Decision*. We proposed to recognize plant specific, plant nonspecific, customer operations and corporate operations expense categories (Accounts 6110 through 6790) incurred in providing regulated interstate services. We stated that we would not permit carriers to include expenses for services that are not subject to Title II regulation by this Commission. We proposed to recognize other operating income and expense accounts (Accounts 7100 through 7160) and the operating tax accounts (Accounts 7200 through 7250). We stated that we would not include nonoperating income and expense accounts and taxes (Accounts 7300 through 7450) and extraordinary items (Accounts 7600 through 7640) unless specifically permitted or justified by a specific showing that these items should be included. Within this framework, we paid particular attention to specific areas addressed in the *Docket 19129 Phase II Decision*.

A. Charitable Contributions, Institutional Advertising and Academic Consulting

1. Positions of the Parties

73. We proposed to recognize reasonable expenses for charitable contributions, institutional advertising costs and academic consulting expenses. In its comments, MCI states that expenses for institutional advertising and charitable contributions should be removed from the interstate revenue requirements of LECs. MCI claims that a LEC does not need advertising to prevent an access customer from purchasing from another supplier since the LECs control a monopoly on access to the local exchange. MCI contends that including these costs merely forces access customers, who have no choice but to buy from the LEC, to subsidize the LECs' advertising expenses. Similarly, MCI states that the inclusion of charitable contributions forces access customers to subsidize the LECs' "generosity". MCI believes that charitable contributions should be paid for by LEC shareholders, not captive access customers. However, MCI claims that these expenses are a valid part of AT&T revenue requirements. MCI contends that advertising plays a critical role in the highly competitive interexchange industry. Also, MCI states that if end users do not approve of AT&T's charitable contributions, they are free to utilize the services of a different long distance carrier.

74. Ameritech, Bell Atlantic, BellSouth, NYNEX, U S West and USTA disagree with MCI's contention that expenses for institutional advertising and charitable contributions should be removed from the interstate revenue requirements of LECs. Ameritech states that institutional advertising does benefit interstate access customers because such advertising helps a carrier to attract necessary capital on reasonable terms and to recruit and retain qualified employees. Ameritech claims a blanket rule disallowing institutional advertising would be unlawful and that over the years the courts have made it clear that the presumption of reasonableness and prudent management accorded operating expenses in general attaches to expenditures for institutional advertising. Ameritech also contends that charitable contributions are legitimate business expenses. Ameritech states that such contributions are part of its commitment to the health and viability of the communities they serve. Ameritech claims that MCI's suggestion that shareholders should bear the cost of contributions misconceives the nature of the return on investment in ratemaking. Although the amount involved is small,[42] the effect of a disallowance of charitable contributions in ratemaking would be to undermine the rate of return purportedly prescribed as fair by this Commission.

75. Bell Atlantic states that this Commission should reject MCI's proposal to disallow LECs' expenses for institutional advertising and charitable contributions because this Commission has already rejected arguments similar to MCI's. Bell Atlantic claims that in 1977 this Commission held that institutional advertising or development expenses to foster normal growth are legitimate charges upon income for rate purposes. Bell Atlantic also claims that this Commission held that a reasonable amount of charitable contributions to support the local community's services is proper in any community in which a company, regulated or unregulated, has a significant presence.

2. Discussion.

76. In our *NPRM* we proposed to recognize reasonable expenses for charitable contributions, institutional advertising and academic consulting. MCI is the only party that objects to our proposed treatment of these expenses.[43] It is MCI's belief that expenses for institutional advertising and charitable contributions should be removed from the interstate revenue requirements of LECs. We are not persuaded by MCI's arguments. We have rejected similar arguments in the past and will continue to recognize reasonable expenses for charitable contributions, institutional advertising and academic consulting.[44]

77. This Commisssion continues to believe that reasonable charitable contributions are very much an obligation of business enterprise to the community it serves and upon which it is dependent for its revenues. We consider reasonable charitable contributions part of the cost of doing business and there is nothing in the record to suggest that they have become unreasonable or excessive. We also consider it appropriate for any company, whether regulated or unregulated, to support the services of the community in which it operates.

78. We also disagree with MCI's contention that institutional advertising should be removed from the interstate revenue requirements of LECs. We agree with Ameritech's statement that institutional advertising benefits interstate access customers because such advertising helps a carrier to attract necessary capital on reasonable

terms and to recruit and retain qualified employees. Absent any strong arguments to convince us otherwise, we see no reason to change our present treatment of either advertising or academic consultant expenses for ratemaking purposes.

79. At this juncture it would be appropriate to note that the amounts borne in interstate revenue requirements will be subject to the cost allocation rules in our *Docket 86 - 111 Decision*. That is, amounts relating to activities that have never been regulated or that have been preemptively deregulated will be removed prior to jurisdictional separations. We would expect these segregations to be made pursuant to approved cost allocation manuals on file with this Commission. These expenses, particularly the advertising expenses, will then be subject to the normal separations process.

B. Nonoperating Gains and Losses - Depreciable Items

1. Positions of the Parties

80. The *NPRM* proposed to include capital gains or losses from sales of depreciable nonoperating plant (Account 2006). Ameritech, BellSouth, and the Pacific Companies disagree with our proposal. The Pacific Companies state that gains and losses on the disposition of telephone plant should not be included in operating income for ratemaking purposes. The Pacific Companies claim that ratepayers do not gain an ownership interest in a carrier's assets merely by paying for telecommunications services. Therefore, they claim that ratepayers acquire no interest in the gain or loss on the disposition of those assets. The Pacific Companies contend that such gains or losses should accrue to the carrier and its investors.

81. BellSouth claims that this Commission's proposal would allocate to ratepayers all of the capital gain on property that is not, and may never have been, in operating status. BellSouth states that when operating plant is sold, the capital gain or loss inures to the ratepayer; when nonoperating plant that has never been in the rate base is sold, the capital gain or loss belongs to the investor and when nonoperating plant that was once included in the rate base is sold, the capital gain or loss must be apportioned between ratepayer and investor. BellSouth suggests that this apportionment can be accomplished either by determining the fair market value of the property at the time it is removed from regulated service, or by assigning a proportionate share of the gain or loss to ratepayers and investors based on the relative time the property was in regulated versus nonregulated status. In its reply comments, ICA agrees with BellSouth. ICA states that gains from the sale of nonoperating plant that was at any time accorded above-the-line treatment should be allocated as net income benefiting ratepayers based upon an equitable apportionment of the gain.

2. Discussion

82. First, we must address the BellSouth claim that our proposal would allocate to ratepayers all of the capital gain on property that may never have been in the rate base. Part 32 provides for recording such gains, if any, in a nonoperating account--specifically, Account 7350, Gains and Losses From the Disposition of Certain Property. We did not propose to use such gains or losses in the determination of regulated income. Our rules will be made explicit in this regard.

83. In some cases, however, gains or losses recorded in Account 7350 are related to assets which were once in the rate base and then transferred to Account 2006. In such cases, we will be guided by the burden-benefit tests articulated in *Democratic Central Committee*.[45] If the assets were never used jointly in the provision of regulated and nonregulated services, we will require all of the gains or losses to be taken into consideration for ratemaking purposes. If assets were used jointly in the provision of regulated and nonregulated services, and a distinction was required by the operation of our *Docket 86-111 Order*, the gain or loss should be allocated based on relative use as measured by the accumulated regulated and nonregulated depreciation. We believe this method is appropriate because it adjusts relative use for the amount of time the asset was included in the rate base. In the case of assets depreciated on a group basis, proceeds will be credited to depreciation reserves on the basis of the accumulated regulated and nonregulated depreciation for that group. In the case of assets depreciated on a unit basis, the same relative use consideration will apply. For example, if an asset held for four years was depreciated at a rate of100 per year and if that asset was held in the rate base in its entirety for three years prior to the operation of our *Docket 86 - 111 Order*, but during a fourth year of service, depreciation was attributed 80 percent regulated and 20 percent nonregulated, 95 percent of the gain would be considered for ratemaking purposes.[46]

C. Land and Other Nondepreciable Property

1. Positions of the Parties

84. In the *NPRM*, we proposed to include in determinations of regulated income the gains or losses from the disposition of land and artworks that were, or had been at any given time, in the rate base. These gains or losses are to be recorded in Account 7150.[47] SNET states that Account 7150 should not be included in regulated net income because ratepayers do not pay for the costs of the land, but rather pay rent for the use of the land. SNET claims that should a loss occur for any reason, the stockholders and not the ratepayer would incur the cost of the loss.

2. Discussion

85. The applicability of the *Docket 19129 Phase II Decision* to gains or losses with respect to land is clear:[48]

> [t]he risk of loss concept is of little relevance with respect to land. In this situation, it is necessary to turn to the financial burden test to determine to whom the gain should go. Applying that test here, we conclude again, that it is the ratepayers who have borne the financial burden during the service life of the land and so should enjoy the gain.[49]

86. We continue to believe this treatment is appropriate. Thus for disposition of land, we will continue to include the entire gain for ratemaking purposes if the land has been included in the rate base and has not been used jointly in the provision of regulated and nonregulated services. If the land has been jointly used in the provision of regulated and nonregulated activities, the gain will be allocated based on the relative amount of time all or any portion of the asset was included in the rate base over the

period of time the asset was in service. For example, if land held for four years were used for three years prior to the operation of our *Docket 86-111 Order* and included in the rate base, and during a fourth year the operation of our *Docket 86-111 Order* mandated an 80 percent 20 percent split between regulated and nonregulated activities, 95 percent of the gain would be considered for ratemaking purposes.[50] We believe this formula is fair and equitable and consistent with the tenets of *Democratic Central Committee*. We will therefore incorporate that formula in our rules.

C. Memberships and Abandoned Projects

1. Positions of the Parties

87. Bell Atlantic claimed that we needed to modify our proposed treatment of Account 7370, Special Charges, because our proposal would eliminate some currently recognized allowable expenses. It mentioned memberships and abandoned projects as examples of items reflected in Account 7370 which are currently recognized as allowable expense, but which would not be allowed under our proposal. We stated that we would not include nonoperating income and expense accounts and taxes (Accounts 7300 through 7450) except upon a showing that such items should be included. The account description for Account 7370 states that this account shall include costs that are typically given special regulatory scrutiny for ratemaking purposes and unless specific justification to the contrary is given, such costs are presumed to be excluded from the costs of services in setting rates.

2. Discussion

88. Turning first to the matter of memberships, NYNEX claims that the costs of memberships have historically been included in the determination of interstate expenses. The NYNEX statement makes no distinction between different kinds of memberships. Account 7370 includes membership fees and dues in social, service, recreational or athletic clubs and organizations, as contrasted with dues and fees for professional and trade organizations which are customarilly charged to operating accounts under Part 31 and Part 32. We do not view our presumptive exclusion of membership fees and dues for social organizations and the like as any departure from our current practices. Abandoned construction projects is another item which we would not routinely permit as an allowable expense since such items usually relate to costs accumulated as deferred charges, which, as we indicated earlier, would also be treated as a non-rate base item absent persuasive evidence to the contrary. The only routine exception to our exclusion of Account 7370 would relate to charitable expenses discussed earlier. We will not, therefore, deviate from our original proposal with respect to memberships and abandoned projects included in Account 7370.

VI. OTHER MATTERS

89. We certify that the Regulatory Flexibility Act[51] is not applicable to the rule changes we are ordering in this proceeding. In accordance with the provisions in Section 605 of the Act, a copy of this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration at the time of publication of a summary of this Order in the Federal Register. As part of our analysis of the amendment described in this Order, however, this Commission has considered the impact of the amendment on small telephone companies, i.e., those serving 50,000 or fewer access lines.[52] Most carriers with fewer than 50,000 access lines would not be affected by the accounting requirement changes discussed herein. However, because interstate pooling and settlement procedures compel the use of the procedures described herein, there will be an indirect affect on approximately 1370 other carriers. The changes discussed in this Order are expected to benefit all carriers, including those indirectly affected.

90. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found not to be subject to the Paperwork Reduction Act of 1980.

91. We are making the rule changes herein effective on January 1, 1988. The Administrative Procedure Act,

5 U.S.C. Section

553(d), requires the publication of a substantive rule not less than 30 days before its effective date unless there is good cause for a shorter interval. In the instant case, a shorter interval would better serve the public interest. These rules are in most respects a codification of long standing Commission policy with respect to AT&T and, after divestiture, the BOCs. Moreover, the ratebase principles embodied in these rules have generally been followed throughout the industry in filings with this Commission including the LECs' annual access tariffs due to become effective on January 1, 1988. To avoid a burdensome and time-consuming re-filing of those tariffs, and to ensure that the treatment of rate base and expenses is uniform and consistent with our new accounting and separation procedures, we are establishing an effective date for these rule changes of January 1, 1988.

VII. ORDERING CLAUSES

92. Accordingly, IT IS ORDERED, that pursuant to the provisions of Sections 1, 4(i), 4(j), 201-205, 218, 220, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 151, 14(i)-(j), 201-205, 218, 220, 403 and Section

553 of the Administrative Procedure Act, 5 U.S.C. Section

553, Part 65 of the Commission's Rules 47 C.F.R. Part 65 IS AMENDED by the policies, rules and requirements set forth herein, effective January 1, 1988.

FEDERAL COMMUNICATIONS COMMISSION

William J. Tricarico
Secretary

APPENDIX A

Parties Filing Comments In Docket 86-497

Alltel Corporation (Alltel)
Ameritech Operating Companies (Ameritech)
Arizona Corporation Commission (Arizona)
Arthur Andersen & Co. (Arthur Andersen)
American Telephone and Telegraph Company (AT&T)

Bell Atlantic Telephone Companies (Bell Atlantic)
BellSouth Corporation (BellSouth)
Cincinnati Bell Telephone Company (Cincinnati Bell)
Communications Satellite Corporation (COMSAT)
Contel Corporation (Contel)
GTE Telephone Companies (GTOCs)
International Communications Association (ICA)
Kiesling Associates (Kiesling)
MCI Telecommunications Corporation (MCI)
Michigan Public Service Commission Staff (MPSC Staff)
Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company and Pacific Northwest Bell Telephone Company (U S West)
National Telephone Cooperative Association (NTCA)
NYNEX Telephone Companies (NYNEX)
Pacific Bell and Nevada Bell (the Pacific Companies)
Southern New England Telephone Company (SNET)
Southwestern Bell Telephone Company (Southwestern Bell)
United States Telephone Association (USTA)
United Telephone System Companies (UTS)

Parties Filing Reply Comments In Docket 86-497
Ameritech Operating Companies (Ameritech)
American Telephone and Telegraph Company (AT&T)
Bell Atlantic Telephone Companies (Bell Atlantic)
BellSouth Corporation (BellSouth)
International Communications Association (ICA)
MCI Telecommunications Corporation (MCI)
Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company and Pacific Northwest Bell Telephone Company (U S West)
NYNEX Telephone Companies (NYNEX)
Pacific Bell and Nevada Bell (the Pacific Companies)
United States Telephone Association (USTA)
Western Union Telegraph Company (Western Union)

APPENDIX B

Part 65-(Amended)

Part 65. Chapter 1 of the Title 47, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 65 would continue to read as follows:

Authority: Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat. 1066, 1072, 1077, 1094, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, and 403.

2. The table of contents to Part 65 would be revised to add new section 65.450 to Subpart C, new section 65.510 to Subpart D and to add new Subpart G so that the table of contents would read in pertinent part as follows:

Part 65. INTERSTATE RATE OF RETURN PRESCRIPTION PROCEDURES AND METHODOLOGIES

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Subpart C - Exchange Carriers

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65.400 Determination of Sets of Firms That Have Risk Characteristics That are Comparable to Interstate Exchange Access Services. 65.450. Net Income.

Subpart D - Interexchange Carriers

65.500. Determination of Comparable Firms for Carriers Other Than Exchange Carriers.

65.510. Net Income.

****

Subpart G - Rate Base.

65.800. Rate Base.
65.810. Definitions.
65.820. Included Items.
65.830. Deducted Items.
Authority: ***

****

3. Subpart C would be amended by adding Section 65.450 to read as follows:

Subpart C - Exchange Carriers

****

§ 65.450 Net Income.

(a) Net income shall consist of all revenues derived from the provision of interstate telecommunications services regulated by this Commission less expenses recognized by the Commission as necessary to the provision of these services. The calculation of expenses entering into the determination of net income shall include the interstate portion of plant specific operations (Accounts 6110-6441), plant nonspecific operations (Accounts 6510-6565), customer operations (Accounts 6610-6623), corporate operations (Accounts 6710-6790), other operating income and expense accounts (Accounts 7100-7160), and operating taxes (Accounts 7200-7250), except to the extent this Commission specifically provides to the contrary.

(b) Gains and losses related to the disposition of plant in service items, shall be handled as follows:

(1) Gains related to property sold to others and leased back under capital leases for use in telecommunications services shall be recorded in Account 4360 (Other Deferred Credits) and credited to

Account 6563 (Amortization Expense - Tangible) over the amortization period established for the capital lease;

(2) Gains or losses related to the disposition of land and other nondepreciable items recorded in Account 7150 (Gains and Losses Resulting from the Sale of Land and Artworks) shall be included in net income for ratemaking purposes, but adjusted to reflect the relative amount of time such property was used in regulated operations and included in the rate base; and

(3) Proceeds related to the disposition of property depreciated on a group basis and used jointly in regulated and nonregulated activities, including sale-leaseback arrangements for property depreciated on a group basis, shall be credited to the related reserves and attributed to regulated and nonregulated in proportion to the accumulated regulated and nonregulated depreciation for that group.

(c) Gains or losses related to the disposition of property that was never included in the rate base shall not be considered for ratemaking purposes.

(d) Except for reasonable charitable deductions and interest related to customer deposits, nonoperating income and expenses and taxes (Accounts 7300-7450) and interest and related items (Accounts 7500-7540) and extraordinary items (Accounts 7600-7640) shall not be included unless this Commission specifically determines that particular items recorded in those accounts shall be included.

4. Subpart D would be amended by adding Section 65.510 to read as follows:

Subpart D - Interexchange Carriers

*****

§ 65.510 Net Income.

The net income methodology specified in § 65.450 shall be utilized by all interexchange carriers subject to § 65.500.

5. Subpart G would be added to read as follows:

Subpart G - Rate Base

§ 65.800 Rate Base.

The rate base shall consist of the interstate portion of the accounts listed in Section 65.820 that has been invested in plant used and useful in the efficient provision of interstate telecommunications services regulated by this Commission, minus any deducted items computed in accordance with Section 65.830.

§ 65.810 Definitions.

As used in this Subpart "account xxxx" means the account of that number kept in accordance with the Uniform System of Accounts for Class A and Class B Telecommunications Companies in 47 C.F.R. Part 32.

§ 65.820 Included Items.

(1) Telecommunications Plant. The interstate portion of all assets summarized in Account 2001 (Telecommunications Plant in Service), Account 2002 (Property Held for Future Use), and Account 2003 (Telecommunication Plant Under Construction-Short Term), and to the extent such inclusions are allowed by this Commission, Account 2005 (Telecommunications Plant Adjustment).

(2) Material and Supplies. The interstate portion of assets summarized in Account 1220.1 (Materials and Supplies) that are used for routine maintenance and repairs of telephone plant and equipment or associated with projects classified in Account 2003 (Telecommunications Plant Under Construction-Short Term) but not yet charged to that account.

(3) Noncurrent Assets. The interstate portion of assets summarized in Account 1410 (Other Noncurrent Assets), Account 1438 (Deferred Maintenance and Retirements), and Account 1439 (Deferred Charges) only to the extent they arise from the provision of interstate telecommunications services and have been specifically approved by this Commission for inclusion. Otherwise, the amounts in Accounts 1401-1500 shall not be included.

(4) Cash Working Capital. The interstate portion of investment required to meet current expenses. The calculation of this amount shall take into account interstate revenue and expense items which are received or paid before the service is rendered and interstate revenue and expense items received or spent after the service is rendered. Claims for a cash working capital allowance from Class A carriers, as defined in 47 C.F.R. Section 32.11, shall be accompanied by a current lead-lag study. In lieu of a lead- lag study, claims for a cash working capital allowance from Class B Carriers may be calculated using the following formula:

(a) The sum of the percentage of interstate revenues billed in arrears shall be multiplied by the average revenue lag days for such revenues and be added to the sum of the percentage of interstate revenues billed in advance multiplied by the average lag days for such revenues.

(b) The resultant weighted revenue lag days from the calculation in paragraph (a) shall then be divided by 365 days.

(c) The sum of the percentage of interstate expenses paid in advance shall be multiplied by the average lag days from the payment to the midpoint of the benefit period and deducted from the sum of the percentage of interstate expenses paid after the provision of the service multiplied by the average lag days for such expense.

(d) The resultant weighted average expense lag days from the calculation in paragraph (c) above shall then be divided by 365 days and deducted from the weighted revenue lag days to arrive at a weighted net lag days.

(e) The weighted net lag day factor derived in paragraph (d) should then be multiplied by annual interstate operating expenses exclusive of depreciation to arrive at the cash working capital allowance.

§ 65.830 Deducted Items.

(a) The following items shall be deducted from the interstate rate base.

(1) The interstate portion of deferred taxes (Accounts 4100 and 4340).

(2) The interstate portion of customer deposits (Account 4040).

(3) The interstate portion of liabilities related to compensated absences (Account 4120) to the extent of the difference between the interstate portion of the deferred charge related to compensated absences (Account 1439) and the interstate portion of the corresponding liability.

(4) The interstate portion of unfunded accrued pension costs (Account 4310).

(5) The interstate portion of other deferred credits (Account 4360) to the extent they arise from the provision of regulated telecommunications services. This shall include deferred gains related to sale-leaseback arrangements.

(b) The interstate portion of deferred taxes, customer deposits compensated absences and other deferred credits shall be determined by multiplying the sum of such funds by the interstate plant factor. (The interstate plant factor shall be computed by dividing interstate plant in service by total plant in service); except that the interstate portion of customer deposits may be determined by special study when use of the interstate plant factor would yield distorted results.

(c) The interstate portion of unfunded accrued pension costs shall bear the same proportionate relationship as the interstateintrastate expenses which give rise to the liability.

FOOTNOTES

[1] Amendment of Part 65 of the Commission's Rules to Prescribe Components of the Rate Bases and Net Income of Dominant Carriers, *Notice of Proposed Rule Making*, 2 FCC Rcd 332 (1987).

[2] American Telephone and Telegraph Co., 38 FCC 2d 213 (1972) (*Docket 19129 Phase I Decision), aff' d sub nom. Nader v. FCC*, 520 F.2d 182 (D.C. Cir. 1975).

[3] American Telephone and Telegraph Co., 64 FCC 2d 1 (1977) (*Docket 19129 Phase II Decision), recons. in part*, 67 FCC 2d 1429 (1978) (*Docket 19129 Reconsideration Order).*

[4] Authorized Rates of Return for the Interstate Services of AT&T Communication and Exchange Telephone Carriers, *Supplemental Notice of Proposed Rule Making*, CC Docket No. 84-800,50 Fed. Reg. 33786 (Aug. 21, 1985).

[5] Authorized Rates of Return for the Interstate Services of AT&T Communications, and Exchange Telephone Companies, CC Docket No. 84-800, Phase I, FCC 85-527 (released September 30, 1985).

[6] Authorized Rates of Return for the Interstate Services of AT&T Communications and Exchange Telephone Companies, *Report and Order*, CC Docket No. 84-800, Phase II, 51 Fed. Reg. 1795, (Jan. 15, 1986) (*Docket 84 - 800 Phase II Order), recon.*, 104 FCC 2d 1404 (1986).

[7] Docket 79-63 followed the rate-base procedures used in Docket 19129, except for those applicable to zero-cost funds. American Telephone and Telegraph Co., 86 FCC 2d 221 (1981) *aff' d sub nom, United States v. FCC*, 707 F.2d 601 (D.C. Cir. 1983) (*Docket 79 - 63 Decision).* Paragraphs 16-21, *infra*, discuss the treatment of zero-cost funds.

[8] Amendment of Part 65, Interstate Rate of Return Prescription: Procedures and Methodologies to Establish Reporting Requirements, *Report and Order*, CC Docket No. 86-127, 52 Fed. Reg. 273 (January 5, 1987). (*Rate of Return Reporting R & O).*

[9] For purposes of this *Report and Order*, large and small carriers mean Class A and Class B carriers, as defined in Section 32.11 of our Rules.51 Fed. Reg. 43493 (December 2, 1986).

[10] Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities, 2 FCC Rcd 1298 (1987) (*Docket 86 - 111 Order), recons. in part*, 2 FCC Rcd 6283 (1987) (*Docket 86 - 111 Reconsideration Order).*

[11] Appendix A lists the parties filing comments and reply comments as well as the abbreviations this *Report and Order* uses to identify the parties to this proceeding.

[12] *See* paragraphs 35-36 for a discussion of possible exceptions.

[13] Statement of Financial Accounting Standards No. 13 (FASB 13) "Accounting for Leases" specifies the four following criteria for determining if a lease should be treated as a capital lease: (1) the lease transfers ownership of the property to the lessee by the end of the lease term; (2) the lease contains a bargain purchase option; (3) the lease term is equal to 75 percent or more of the estimated economic life of the property; or (4) the present value of the minimum lease payments at the inception of the lease is at lease 90 percent of the market value of the leased property at that time. *See* 47 C.F.R. Section 32.2681.

[14] Revision of the Uniform System of Accounts for Telephone Companies to Accommodate Generally Accepted Accounting Principles,50 F.R. 48408, (November 25, 1985) (*GAAP Order).*

[15] We believe this modification of our proposed treatment of sale leasebacks will alleviate the concerns expressed by ICA. However, as ICA's comments relate to transactions with affiliates, valuations of such transactions will be governed by our *Docket 86 - 111 Reconsideration Order.*

[16] *Docket 19129 Phase II Decision, supra*, at 61.

[17] *Id.*

[18] *Id.*

[19] Ameritech, Bell Atlantic, Cincinnati Bell, the GTOCs, NYNEX, the Pacific Companies, SNET, AT&T, BellSouth, U S West, USTA and Arthur Andersen.

[20] Pub. L. No. 99-514, 99th Cong., 2d Sess. (1986).

[21] In support of this claim Ameritech cites a study that was published in *Public Utilies Fortnightly*. This study is discussed in paragraph 29.

[22] *Docket 19129 Phase II Decision, supra*, at58.

[23] *Id.* at 60.

[24] Morin, *An Emperical Study of the Effect of CWIP on Cost of Capital and Revenue Requirements, Public Utilities Fortnighily, July 10, 1986 (at 21) and July 24, 1986 (at 24).*

[25] Id. July 24, 1986 Table 2, p. 25.

[26] Docket 19129 Reconsideration Order, supra, at 1439.

[27] Docket 19129 Phase II Decision, supra, at 74.

[28] Id.

[29] Docket 19129 Reconsideration Order, supra, at 1436,1437.

[30] Petitions for Recovery of Equal Access and Network Reconfiguration Costs, Memorandum Opinion and Order, FCC 85-628 (released December 9, 1985); recon. denied in part and granted in part, 1 FCC Rcd 434 (1986).

[31] Use of Generally Accepted Accounting Principles in Part 32 of the Commission's Rules, 2 FCC Rcd (1987) (Pension and Debt Proceeding).

[32] In the NPRM, we proposed not to include deferred charges related to the initial catch-up entry for recording the liability related to compensated absences (leave or absences earned but not yet taken) pursuant to accounting required in the GAAP Order, supra. Instead, we proposed to deduct differences arising in subsequent years between the liability and the related deferred charge balance and determine the interstate portion using the interstate plant factor. The comments in this proceeding have not indicated a more appropriate approach.

[33] Long-term prepayments, such as those related to pension fund payments, which are expected to be long-term in nature, should be recorded in Account 1410, Other Noncurrent Assets.

[34] We proposed that the following accounts be treated as deductions from the rate base: Account 4100, Net Current Deferred Operating Income Taxes; Account 4110, Net Current Deferred Nonoperating Income Taxes; Account 4340, Net Noncurrent Deferred Operating Income Taxes; Account 4350, Net Noncurrent Deferred Nonoperating Income Taxes.

[35] In the Pension and Debt Proceeding (note 31 supra), we concluded that it would be appropriate to include in the rate base pension fund payments in excess of recognized expenses. We also concluded that in the converse situation, the excess should be deducted from the rate base, to the extent recognized expenses exceeded pension fund payments. Beginning with the calendar year ending December 31, 1988, carriers should deduct an interstate share of any such amount from the interstate rate base. The interstate share of the deduction should be in the same proportion as the interstateintrastate expenses which give rise to the liability. When tax timing differences occur, they should be normalized. This instruction shall also apply to companies that received permission to adopt new pension accounting practices in 1987, which comport with standards promulgated by the Financial Accounting Standards Board.

[36] Docket 79-63 Decision, supra, at paragraph 30.

[37] In the context of determining the working capital requirements that are necessary for day-to-day operations, lead-lag studies measure the patterns of cash inflows and outflows relative to the time service is rendered. "Lead" refers to those revenue and expense items that are received or paid before a service is rendered. "Lag" refers to those revenue and expense items that are received or paid after service is rendered.

[38] The GTOC's formula yields essentially the same results as the FERC 45 day allowance recommended by Comsat. Hereinafter, formulas yielding 45 lag days will be referred to singularly as the 45 day lag formula.

[39] Expense lags refer to the time elapsing between incurring an expense and paying it.

[40] While expressing a preference for lead-lag based calculations, NYNEX expressed no opposition to the use of formula methods by other carriers.

[41] Contrary to its assertion, U S West is not being required to perform lead-lag studies simply because the other carriers wish to do so. We are requiring U S West to perform lead-lag studies because, as we have already stated, we believe that lead-lag studies are the most accurate method for calculating the interstate cash working capital requirements.

[42] Ameritech claims that charitable contributions represent approximately 5100ths of 1% of operating revenues.

[43] No party disputed payments for academic consulting.

[44] Docket 19129 Phase II Decision, supra, at 83-88.

[45] Democratic Central Committee v. Washington Metropolitan Area Transit Commission, 485 F.2d 786 (D.C.Cir. 1973), cert. denied, 415 U.S. 935 (1974). This opinion evaluated a regulatory agency's response to a utility's actions in removing assets from regulated service.

[46] Regulated depreciation expenses by year 100+100+100+80=380. 380 divided by total depreciation400 = 95 percent.

[47] Gains and losses related to land and artworks which were never included in the rate base are to be recorded as nonoperating items in Account 7350.

[48] Docket 19129 Phase II Decision, supra, at 68. We noted that with nondepreciable property, particularly land, there was little risk of loss and over the long run, land is generally an appreciating property. We believe the same is generally true of artworks (defined as objects which posess aesthetic value, are of original or limited edition, and do not have a determinable useful life) that are included in Account 2001 but not depreciated.

[49] Id.

[50] Regulated months in service by year 12+12+12+9.6=45.6. 45.6 regulated months in service divided by 48 months = 95 percent. The 9.6 months used for the fourth year was determined by multiplying12 months by 80 percent.

[51] U.S.C. Section 601 et. seq. (1982).

[52] Because of the nature of local exchange and access service, this Commission concluded that small telephone companies are dominant in their fields of operation and therefore are not small entities as defined by the Regulatory Flexibility Act. *See* MTS and WATS Market Structure, 93 FCC 2d 241, 338-39 (1983). Thus, this Commission is not required by the terms of that Act to apply the formal procedures set forth therein. We are nevertheless committed to reducing the regulatory burdens on small telephone companies whenever possible consistent with our public interest responsibilities. Accordingly, we have chosen to utilize on an informal basis, appropriate Regulatory Flexibility Act procedures to analyze the effect of the amendment of the rules on small telephone companies.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Nevada Bell's AAD 7-1692
Permanent Cost Allocation Manual
for the Separation of Regulated
and Nonregulated Costs

and

Pacific Bell's
Permanent Cost Allocation Manual
for the Separation of Regulated
and Nonregulated Costs

MEMORANDUM OPINION AND ORDER

Adopted: December 28, 1987; Released: January 19, 1988

By the Chief, Common Carrier Bureau:

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I. INTRODUCTION AND BACKGROUND

1. Nevada Bell and Pacific Bell[1] filed cost allocation manuals on September 1, 1987, pursuant to the requirements of the *Joint Cost Order* [2] governing the separations of Nevada's and Pacific's regulated and nonregulated costs. Consistent with the requirements of the *Joint Cost Order*, the manuals are intended to be used on or after January 1, 1988, the same day that the revised Uniform System of Accounts (USOA) is scheduled to become effective. [3] The manuals include lists of Nevada's and Pacific's nonregulated activities, lists of activities the carriers treat as incidental to regulated for accounting purposes, information on affiliate transactions, information on employee time records, and information describing the cost apportionment process for each USOA account. In addition, Pacific submitted a "Specific Showing" requesting that forecasts of network plant usage associated with the provision of protocol processing be made over a two-year period, instead of a time period encompassing the entire depreciable life of the network plant.[4]

2. Three parties filed comments on Pacific's manual, and two parties commented on Nevada's manual.[5] Nevada and Pacific filed separate replies. In addition to reviewing the pleadings, we have conducted our own review of the manuals filed by Pacific and Nevada for consistency with the Commission's rules. We have concluded that the format and content of the manuals generally permit us to make an informed judgment as to the ability of the manual to discourage cross subsidy. We conclude that, overall, the manuals submitted by Nevada and Pacific provide sufficient assurance against the misallocation of costs and revenues to permit their implementation on January 1, 1988.

3. We require, however, that in specific instances, Nevada and Pacific specify in greater detail the procedures they intend to follow in allocating the costs and revenues of regulated and nonregulated activities, and in some cases, to correct ambiguities and omissions in the manuals. We shall require Pacific and Nevada to submit revision to their manuals, and we shall solicit public coment on the revisions. Any revisions to the manuals that result from the instant Order approving the manuals or a subsequent order concerning the revisions shall be made retroactive to January 1, 1988. Requiring that all revisions to the proposed manuals be retroactive eliminates the necessity of having manuals that are fully approved in advance of their implementation. We therefore approve Nevada's and Pacific's cost allocation manuals subject to a number of conditions and requirements for the submission of further information.[6]

4. This Order is divided into three substantive sections. Section II discusses general issues, including portions of the manuals that relate to affiliate transactions, incidental activities, nonregulated activities, and employee time reporting. Section III discusses issues raised in connection with the proposed apportionment methods and specific accounts. Section IV contains a discussion of procedural issues, as well as information concerning the procedural requirements for updating cost allocation manuals.

II. GENERAL ISSUES

A. Overall Sufficiency of the Manuals

5. The *Joint Cost Order* listed five types of information that must be included in the cost allocation manuals: (a) a description of each nonregulated activity; (b) a list of all the activities the company now accords incidental accounting treatment, and the justification for treating each as incidental; (c) a chart showing all corporate affiliates; (d) a statement identifying affiliates that engage in or will en-

gage in transactions with the carrier entity and describing the nature, terms and frequency of such transactions; and (e) for each USOA account and subaccount, detailed specifications of the cost categories (or cost pools) to which amounts in the account or subaccount will be assigned, and of the allocation methodology for each cost category (or pool).[7] In addition, the manuals must contain a description of the methods used to teach, monitor, and enforce accurate time reporting, along with a description of the allocation of nonproductive time.[8]

6. MCI argues that the manuals submitted by Nevada and Pacific do not provide the level of comprehension necessary to perform a meaningful review of the cost allocation proposals. According to MCI, the inadequate descriptions of the cost pooling process render it impossible to assess the validity of the proposals. MCI also argues that cost apportionment procedures identified in the manuals are vague.[9] In response, Nevada argues that its procedures are adequately defined and described.[10] Pacific responds that MCI's concerns appear to be grounded in a lack of understanding of the USOA. According to Pacific, the USOA compels like costs to be grouped together so that many cost pools are "virtually dictated" by the USOA.[11]

7. Our review of the manuals submitted by Nevada and Pacific, as well as the comments and reply comments filed in this proceeding, reveal that the manuals are sufficiently detailed for us to permit the manuals to take effect. While a number of ambiguities and omissions exist, the problems with the manual can be readily corrected with the filing of additional information and amendments. Each of the subject-matter areas required by the Commission has been addressed, although some are not discussed in the detail we would like. However, we do not believe that the defects in the manuals submitted by Nevada and Pacific require rejection.

8. In making this evaluation, we have examined Pacific's and Nevada's manuals in detail to determine if the information provided permits us to make an informed judgment that the proposed manual will discourage cross subsidy. We have specifically explored cost allocation proposals to determine whether the manuals provide us with a clear understanding of the basis upon which cost categories are formulated, and whether the manual provides a clear understanding of how the costs reflected in the cost categories are allocated between regulated and nonregulated activities. We find that, overall, the manual provides us with the level of understanding necessary to conclude that the manual procedures will discourage cross subsidy. In a number of specific instances, however, additional information will be required before we can make this judgment for certain of Nevada's and Pacific's proposals. We therefore will require Nevada and Pacific to submit additional information in the form of revisions to their manuals, as a condition of our approval of them. We will permit public comment on any changes that Nevada and Pacific make to their manuals as a result of this Order.[12] In order to provide guidance to Nevada and Pacific in fashioning their revisions, we will address each of the issues raised by the commenting parties, along with additional issues we ourselves have identified.

B. Affiliate Transactions

9. The *Joint Cost Order* establishes specific rules governing the provision of assets and services to and from affiliates. These rules were created in order to discourage carriers from avoiding the cost allocation rules. If a carrier sought to avoid the application of fully distributed costing, it could, in the absence of the affiliate transaction rules, provide assets or services to or from a separate but affiliated company in a manner that would allow nonregulated operations to bear less than fully distributed cost. The affiliated transactions rules specify the valuation standards that will be applied in accounting for transactions between affiliates. These rules vary depending upon whether the transaction involves assets or services.[13] The *Joint Cost Order* also required that carriers include in their cost allocation manuals "[a] statement identifying affiliates that engage in or will engage in transactions with the carrier entity and describing the nature, terms, and frequency of such transactions."[14]

10. Our examination of Nevada's and Pacific's manuals reveals that neither carrier has fully complied with the Commission's requirements.[15] Nevada's manual contains a one-page summary of its affiliated company transactions. According to Nevada, all of its transactions with corporate affiliates are governed by 125 contracts. Nevada states that the contracts establish prices for services and are based on fully allocated costs. Further, Nevada states that these contracts are routinely" filed with the Commission under the terms of a Commission order released in 1986. In addition, Nevada reports that all affiliated companies pay a portion of the holding company's costs pursuant to a "Joint Cost Allocation" agreement. Finally, Nevada states that it "may" provide telephone service to its corporate affiliates, although most affiliates are located outside of Nevada's service area.[16]

11. Nevada's summary description of its transactions fails to provide the level of detail required by the *Joint Cost Order*. The purpose for requiring carriers to provide statements describing transactions with affiliates is to permit us to assess whether the carrier understands the Commission's rules and is following those rules. From the information provided by Nevada, it is impossible for us to make such a determination. We do not know whether the transactions involve assets or services, and whether a generally-available price exists which can be used to value the assets or services provided or received. Furthermore, Nevada has provided us only with a statement concerning the frequency of billing, not with the frequency of the transactions. In addition, the nature of the transactions is described only as "shared administrative" services and data processing.

12. In revising its affiliate transactions section, Nevada must provide the required information on each transaction or, if a transaction is repetitive or ongoing, on each type of transaction. Nevada's description of the transaction must describe whether the transaction involves a service or a transfer of assets, and must include a brief description of the service or assets. The terms of the transaction are governed by the Commission's rules. We therefore must have sufficient information for us to determine if a generally-available or prevailing price exists for the service or asset in question. We cannot rely on conclusory statements that the transaction is in compliance with the Commission's rules. Nevada must also include information on the frequency of each transaction or type of transaction. We cannot accept, in lieu of this showing, a reference to affiliate contracts that were filed pursuant to a Commission decision that pre-dates the *Joint Cost Order*. Examination of individual contracts for compliance with the Commission's affiliate transactions rules is an enforcement

function. The information to be provided in the manuals is intended to demonstrate that the carrier understands, and will follow, the Commission's rules. The submission of, or reference to, individual contracts therefore does not meet the Commission's requirments for the submission of affiliate transaction information in the cost manuals.

13. Pacific's manual, while providing much more information on affiliate transactions than Nevada's, also fails to provide the information required by the *Joint Cost Order*. Pacific provides a list of affiliates with which it engages in affiliate transactions, as well as a four-page chart that summarizes the type of services provided to each nonregulated affiliate. Pacific states that all of these transactions are valued according to the requirements of the *Joint Cost Order*. According to Pacific, services are provided "upon demand."[17]

14. First, we note that all of the transactions listed are those provided by Pacific to its affiliates. This implies that Pacific is not involved in any transactions in which it receives a good or service from an affiliate. If the implication created by the manual is indeed correct, then Pacific must clarify in amendments to its manual that no affiliate provides it with any goods or services. If the implication is incorrect, Pacific must amend its manual to include transactions for services and assets that it receives from affiliates.

15. Second, Pacific must provide the terms of the transactions. Conclusory statements that the transactions comply with the rules are insufficient. Pacific must reveal whether the transaction involves a service or asset, and whether a prevailing price for the service or asset is available.

16. We have identified several other problems with Pacific's affiliate transaction section that must be corrected. First, Pacific must specify the frequency of the transactions. If all the transactions are provided on an ongoing basis, then the manual should so state. Also, the list of affiliates appearing on page 5-6 is inconsistent with the four-page chart of affiliate transactions for two reasons. The list, as it appears on page 5-6, fails to acknowledge that transactions might also be conducted with the subsidiaries of companies appearing on the list. Only by reading a footnote to the subsequent chart does it become clear that transactions with subsidiaries are also contemplated. Second, the list fails to indicate that any transactions will be conducted with Comet, Inc., which appears on the corporate chart as an entity separate from PacTel Personal Communications. Finally, the affiliate transaction section fails to indicate the one transaction that Pacific probably provides to almost all its affiliates -- regulated telephone service.[18] Pacific must therefore amend its manual to correct these ambiguities and omissions.

C. Nonregulated Activities

17. Both the Pacific and Nevada manuals provide the required description of nonregulated activities. Pacific's manual divides nonregulated activities into four groupings: (a) network applications, (b) inside wire, (c) customer premises equipment (CPE), and (d) noncommunications activities.[19] Nevada's manual lists the following nonregulated activities: (a) digital network channel terminating equipment (NCTE), (b) inside wire, (c) planning and development of enhanced services, (d) loaner set program, (e) joint marketing with CPE vendors, and (f) voice mail services.[20]

18. Several aspects of Pacific's description of nonregulated services render its manual confusing. Pacific's discussion of CPE first describes the existing joint marketing of CPE that Pacific undertakes with an affiliate. The balance of the discussion concerns CPE activities that might be provided in the future. We believe that, in general, the manuals should reflect activities that the companies are presently engaged in or activities that are currently being proposed for the near future. Unless the manuals reflect current activities, auditability of the manuals over time will become increasingly difficult as confusion mounts over what has and has not been disclosed in the manuals. Pacific must therefore delete references to activities that it "might" offer at some future time in its description of CPE activities and elsewhere in its nonregulated activities section.

19. In addition, Pacific provides only a one sentence description of its "noncommunications services" without describing what they are. The purpose of including a list of nonregulated activities in the manuals is to permit us, as well as the independent auditors, to develop some sense of USOA accounts that are likely to include nonregulated costs. We cannot do this without a description of the nonregulated activity. If Pacific is engaged in noncommunications services that do not qualify as incidental services, then its manual should briefly describe what those are.

20. One aspect of the description of nonregulated activities in Nevada's manual requires further explanation. In its discussion of digital NCTE, Nevada states that joint service orders will be issued by sales representatives for network services and NCTE activity. Several sentences later, Nevada states that "no network transmission or maintenance engineering" will be involved in the provision or repair of NCTE. This discussion must be made more specific. If joint service orders for network services and NCTE are issued, then Nevada must explain how it will keep the provision or repair of NCTE separate.

D. Incidental Activities

21. In the *Joint Cost Order*, the Commission recognized that carriers engage in a number of miscellaneous activities that are not considered to be regulated, but that have traditionally been recorded in regulated books of account as a matter of convenience. These incidental activities are outgrowths of the carrier's regulated operations and are typically quite small in terms of the costs and revenues that they generate. The *Joint Cost Order* requires carriers to include a list of these activities in their manuals, together with a justification for treating these activities as incidental.[21] To qualify for incidental treatment, the activity must be an outgrowth of regulated operations, cannot constitute a separate line of business, and must have been

traditionally treated as incidental for accounting purposes by the carrier claiming incidental treatment. The sum total of all incidental activities shall not exceed one percent of a carrier's total revenues.

22. In its manual, Nevada has provided the required list of incidental activities. Nevada's manual also states that the activities listed meet all of the Commission's criteria for incidental activities. Absent this conclusory statement, Nevada makes no attempt to justify why the activities listed should be considered incidental. Nevada must therefore amend its manual to provide the required justifications. For each activity listed, Nevada must explain why the activity is an outgrowth of regulated operations and is not a separate line of business. Nevada must also demonstrate that the activity has traditionally been treated as incidental on its regulated books of account.

23. In addition to providing the required justification, Nevada must also provide more information about the activities listed in order for us to make a determination that the activities listed as incidental do not also constitute affiliate transactions. For example, Nevada states that it provides training courses on an "open seat basis." To the extent that the persons enrolled in the courses are employees of affiliates, the cost of the course to the affiliates is governed by the affiliate transactions rules and should be listed in Nevada's affiliate transaction section of its manual.

24. Pacific, in its manual, similarly fails to provide the required justification for treating its listed services as incidental. Like Nevada, Pacific states that its services meet the Commission's requirements for incidental activities, but does not explain further why the listed activities should be considered incidental. Pacific must provide the required justification so that we may determine whether the activities listed do in fact qualify under the requirements set forth by the Commission.

25. One of the activities listed by Pacific is "general services to nonregulated affiliated companies." Pacific must delete this from its list of incidental activities, and not account for general services provided to nonregulated affiliates as if such services were an incidental transactions. Services provided to affiliates must always be treated for accounting purposes as affiliate transactions, regardless of the size and scope of the service. The Commission's affiliate transactions rules do not contain exceptions for transactions that are small in size. In addition, we require Pacific to provide additional details about each of the incidental activities listed so that we can determine that the activities listed properly appear in the incidental activities section, as opposed to the affiliated transactions section.[22]

E. Employee Time Reporting

26. In the *Joint Cost Order*, the Commission permitted carriers to select from among several methods of recording employee time. The Commission reasoned that, since wages and salaries would serve as an important technique in the allocation of costs, it was important that carriers use accurate methods of recording employee time. The Commission further found that no one time reporting system would provide accurate results in all situations. Carriers were therefore free to propose the use of positive time reporting, exception time reporting, or time and motion studies.[23]

27. We have identified several problems with Pacific's explanation of its proposed time reporting methods. First, Pacific must provide more information on which of its three proposed time reporting methods apply to which of its employees.[24] Pacific must explain if the groups of employees it has identified include support staff and managers. Pacific must also provide a brief description of the functions performed by the employees it has assigned to the various groups so that we may assure ourselves that all employees have been included.

28. Second, once Pacific has identified which time reporting methods apply to which groups of employees, we require Pacific to provide us with additional detail on its study and survey methodologies it will use to measure the time devoted to regulated and nonregulated activities by some of its employees. More information is needed concerning the study and survey periods, the distinction between studies and surveys, and whether different methodologies will be employed for different employee groups, to determine if the methods proposed by Pacific will result in accurate measures of employee time.

29. Finally, Pacific must provide more information on its treatment of nonproductive time. Pacific's manual provides for two types of nonproductive time. The first is nonproductive time identified through existing reporting mechanisms, such as holidays and sick leave, and the second is identified "by a factor which represents the proportional relationship between nonproductive and productive time, *e. g.*, breaks and administrative activities as well as meetings and conferences which are not specific to regulated or nonregulated activities."[25] According to Pacific, the "factor" is developed through periodic sampling of representative work functions. Furthermore, Pacific states that for its plant specific employees, attribution of nonproductive time is performed by an accounting distribution system" that "applies various loadings to reported dollars and distributes the amounts to final accounts." Pacific must explain the factor" it is using to identify nonproductive time and how that factor operates. The description provided in the manual is far too brief to permit us to make a judgment that it will produce accurate cost allocations. In addition, Pacific must explain its "accounting distribution system" in further detail, and particularly what "various loadings" Pacific intends to apply as part of that system.

30. We have also identified several problems with Nevada's time reporting presentation. Nevada must identify more specifically the groups of employees to which the various time reporting methods apply. For certain employee groups, Nevada has listed two methods of employee time reporting.[26] Nevada must distinguish between the employees subject to the different methods. Second, while Nevada states that it does include direct supervision and support costs in the employee costs allocated between regulated and nonregulated activities, Nevada does not explain how those costs will be included. According to the manual, direct supervision and support costs are allocated "through mechanized overhead loading procedures." No further explanation is provided. We need to know what those procedures are before we can ascertain whether the proposal will result in an accurate allocation of costs. Finally, Nevada must provide more information with regard to the "special studies" it proposes to undertake to determine nonproductive time for those employees that

exception time report. Nevada must disclose the scope of the studies, an overview of their methodology, as well as a description of their frequency.

F. Joint Use of Network Plant

31. In the *Joint Cost Order*, the Commission established that jointly-used network plant must be allocated based on a forecast of the peak relative nonregulated usage of the plant over its entire depreciable life. The Commission elected to adopt a forecasted use approach in order to reflect the nature of capital investment decisions, *i. e.*, that investment decisions are made in anticipation of future use.[27] On reconsideration, the Commission reduced the length of the forecast period to three years in recognition of the practical difficulties of forecasting relative use over a lengthy depreciation period.[28]

32. In a specific showing submitted with its cost manual, Pacific requests that it be permitted to forecast peak relative nonregulated usage over a two year period.[29] Pacific argues that a two-year period is more consistent with its internal decision-making with regard to network plant investment, its financial processes, and the increasing modularity of network plant installations. As a result, Pacific argues, two-year forecasts will be more accurate and reliable.

33. Pacific's proposal is opposed by IBM.[30] IBM argues that the Commission's decision to reduce the forecast period from depreciable life to three years did not provide a license for carriers to seek forecast periods of such short duration that they amount to a "current use allocation. IBM argues that the Commission expressly rejected current use as an allocator of network plant, finding that current use did not place a sufficient amount of investment risk on shareholders. In response, Pacific argues that the Commission resolved the forecast period issue in the *Reconsideration Order*.[31]

34. While Pacific argues that the forecast period issue is moot, it does not offer to withdraw its request or amend its manual to comply with the Commission's decision. We therefore must deny Pacific's request. We believe that the Commission's decision to modify the length of the forecast period substantially alleviates the problems Pacific states it will have in making lengthy forecasts. Furthermore, Pacific has not made the showings required in the *Reconsideration Order* for reducing the forecast period below three years. We direct Pacific to amend its manual to comply with the three- year forecast period adopted in the *Reconsideration Order*.

G. Avoidance of Tariff Rates

35. The *Joint Cost Order* established a hierarchy of cost allocation principles for carriers to follow in formulating their cost allocation proposals. The first principle, contained in Section 64.901 of the Commission's Rules, is that nonregulated activities should be charged at a tariffed rate for services that are offered under tariff.[32] Western Union argues that the Pacific manual evidences an intent on the part of Pacific to avoid that cost principle, and instead allocate costs as if no tariffed rate existed. According to Western Union, Pacific has indicated that it considers some transmission equipment to be jointly-used, and is therefore proposing to allocate the cost based on a peak usage forecast instead of supplying the equipment under tariff.[33] In response, Pacific argues that whenever tariffs exist, it will charge tariffed rates, and that Western Union's concerns are better addressed in the context of the *Computer III* proceeding.[34]

36. Western Union has found only one instance in the Pacific manual in which the cost of transmission equipment is not being directly assigned to regulated activities. In its cost allocation proposal for Account 2232, Circuit Equipment, Pacific states that some of the costs will be directly assigned to regulated, while some of the cost is allocated pursuant to the peak relative nonregulated forecasting rule because it is shared. In our comments on specific accounts, below, we have questioned why Pacific considers its investment in circuit equipment to be shared. If we discover, based upon amendments we shall direct Pacific to file, that the cost of the circuit equipment is not shared, then all of the costs in the account must be directly assigned to regulated activities and recovered under tariff. Furthermore, as part of its implementation of *Computer III*, Pacific may develop a basic service element that includes the functions provided by the equipment recorded in this account. In that event, the cost of the service must be determined by the rate for the basic service element that the carrier charges to itself and to others. Until that time, it appears that all of the costs of this account must be assigned to regulated.

III. Account - by - Account Analysis

37. Both Nevada and Pacific provide cost apportionment tables that list proposed methods for separating the costs recorded in USOA accounts into cost pools, and for apportioning the cost pools between regulated and nonregulated activities. Various parties have raised issues with respect to individual accounts, as well as the cost pools provided within those accounts. In addition, we have reviewed the table and identified additional issues to be resolved. Before discussing specific account issues, however, some general problem areas have been identified that relate to multiple accounts. We will discuss these more general issues first.

A. Identification of Cost Pools

38. In the *Joint Cost Order*, the Commission required that carriers group homogenous costs into categories or pools that could be apportioned using a single apportionment factor. Both Pacific and Nevada have established cost pools in their manuals and have provided some information concerning the segregation of those pools from the other costs in those accounts. In its manual, Pacific provides a description of the characteristics of cost pools that will be directly assigned to regulated or nonregulated activities, directly attributable, or allocated on the basis of the general or marketing allocators.[35] In addition, Pacific lists, for each pool in its table, a "cost pool identification basis." Similarly, in its cost apportionment table, Nevada briefly describes the methods it proposes to use to identify cost pools.

39. MCI argues that the methods employed by Pacific and Nevada to apportion costs into cost pools are poorly defined and inadequately justified. MCI states that Pacific merely provides that costs will be apportioned into homogeneous cost pools without explaining how the division will occur. In addition, MCI argues that Pacific has failed to provide specific information on the various tracking mechanisms Pacific will use to identify costs to be directly

assigned. MCI also argues that Nevada has simply stated it will rely upon various forms of "analysis to apportion costs into pools.[36]

40. In response, Pacific argues that MCI's criticisms are unfounded because the cost allocation tables define how each account is divided into cost pools. Pacific states that the term "tracking mechanism refers to "field codes" that are processed through the accounting and property records system. According to Pacific, detailed records on each type of tracking mechanism are being maintained for review by independent and Commission auditors. Pacific also states that in the process of preparing the manual, its staff prepared workpapers that provide additional detail on cost pool formulation, and that those workpapers are available to Commission auditors or to independent auditors.[37] Nevada also disagrees with MCI's criticism.[38]

41. Our review of Nevada's and Pacific's manual indicates that the procedures by which costs are divided into cost pools requires additional explanation. For example, Pacific states that in many cases, it will segregate costs into pools by subaccount. By this we infer that Pacific has created its own subaccount, since the USOA mandates subaccounts in relatively few instances. For other cost pools, Pacific states that costs are "directly identifiable by analysis of main account." In still other cases, Pacific is employing various tracking mechanisms to identify cost pools.[39] We are unable to distinguish between these methods. Pacific must provide more information concerning each of these identification methods, and how they differ from one another. In making its revisions, Pacific should avoid describing its cost pool apportionment bases using terms that can be interpreted in many ways. When Pacific uses terms such as analysis, it must explain exactly what the analysis entails.

42. Furthermore, in some cases Pacific states that it will derive a cost pool using either a "tracking mechanism" or some residual method of isolating costs. Pacific cannot provide for contingent apportionment methods without identifying the contingency. In making amendments to its manual, Pacific is directed to state positively which method will be used to identify cost pools.

43. Nevada's manual contains similar flaws. Nevada, in describing how it identifies cost pools, states that it will employ account transaction analysis," "individual transaction analysis," transaction analysis," "analysis of property records," "analysis of central office components and functions," "analysis of leasehold improvement records," and analysis of bills" without describing the analytical process that will occur in each case. We must understand how each cost pool apportionment process operates and how it differs from the others. In addition, Nevada also references both field reporting codes and tracking codes as ways in which it will identify costs for pooling purposes. Before we can assess the sufficiency of these methods we must have an understanding of the criteria for assigning costs into pools. Disclosure of the use of codes provides an understanding of the mechanics of pooling, but does not illuminate the decisional criteria employed.

B. Accounts To Be Added

44. In the *Joint Cost Order*, the Commission required that carriers submit cost allocation proposals for each USOA account and subaccount.[40] This requirement, however, if interpreted literally, would have mandated the allocation of USOA accounts that are unrelated to measures of a carrier's costs and revenues. In the *Automated Reporting Requirements* proceeding, the Commission made public for the first time the list of accounts that would be subject to joint cost reporting.[41] In addition to the accounts provided for there, we have identified six additional accounts that must be added to the list of those apportioned in the cost allocation manuals. These additional accounts are: Account 1439, Deferred Charges; Account 2004, Telecommunications Plant Under Construction- Long Term; Account 4120, Other Accrued Liabilities; Account 4360, Other Deferred Credits; Account 5050, Customer Premises Revenue; and Account 7150, Gains and Losses from Disposition of Land and Artworks.

45. Because the list released in the *Automated Reporting Requirements* proceeding was not available until after Nevada and Pacific filed their manuals, they have omitted several accounts that appear on the list. In addition, Pacific does not provide for any of the six additional accounts we have subsequently identified, while Nevada has provided for only five of the six. We direct Nevada and Pacific to amend their manuals to include allocation proposals for each of the omitted accounts.

46. In making revisions to the manuals, Pacific and Nevada may find that there are several accounts for which they may have no investment, expenses, or revenues. The carriers must nevertheless list these accounts in the cost allocation tables provided in their manuals. In the comments column of the table, Pacific and Nevada should indicate that they have no current cost or revenues in the account.

C. Undefined Terminology

47. Throughout their manual, Pacific and Nevada use vague and undefined phrases to describe their cost allocation proposals. For example, for many of its expense accounts, Pacific states that it will allocate a number of cost pools based on "a measure" of actual relative use. Pacific provides no explanation of the measure or measures it intends to use. As a result, we cannot determine if the proposed allocation method will produce reasonable results. Whenever Pacific proposes to use an actual measurement, it must state what the measurement will be and how it will be obtained.

48. In addition, Pacific has for many expense accounts isolated cost pool for "salary-related" costs. In each case, Pacific has stated that these costs will be attributed to regulated and nonregulated operations "in the same proportion as directly assigned and attributed wages and salaries within the appropriate functional area." Pacific must provide an additional explanation of this allocator. We cannot make a judgment about its reasonableness until we know what Pacific means by "appropriate functional area" in each case. Pacific is therefore required to amend its manual accordingly.

49. Nevada repeatedly uses the term "relative value" to describe an allocator that refers to the application of the cost allocation results of another account. Use of the word "value" is ambiguous. Value" can have many different meanings. We therefore require Nevada to amend its manual to delete references to "relative value" and to replace it with more precise terminology, such as "relative investment.

D. Other Issues

50. *True - up procedures.* The *Joint Cost Order* established that carriers must forecast peak relative nonregulated usage of jointly-used network plant. If forecasted usage for nonregulated activities is less than actual usage by nonregulated activities, carriers are required to reallocate plant from regulated to nonregulated operations at undepreciated baseline cost plus an interest charge equivalent to the interstate rate of return.[42] This mechanism, the Commission reasoned, will ensure that carriers do not have an incentive to underforecast nonregulated usage, thereby requiring ratepayers to bear more of the investment risk.

51. MCI argues that the true-up procedures proposed by Nevada and Pacific are insufficient to discourage cross-subsidization. According to MCI, neither Nevada or Pacific adequately explains the true-up mechanisms they will employ. In addition, MCI argues that the payment of a penalty based on the interstate rate of return will not serve to deter cross- subidization. Furthermore, MCI argues that carriers will be able to skew their usage projections by adding "nonhomogeneous" costs to a pool.[43]

52. Nevada responds that MCI's arguments are misplaced, because Nevada has complied fully with the Commission's rules regarding forecasting and true-ups. In addition, Nevada states that the annual independent audit will ensure that deliberate underforecasting does not occur.[44] Pacific argues that MCI's challenge should have been made in the reconsideration of the *Joint Cost Order*. Pacific also argues that carriers will not be able to skew usage projections because the information necessary to decide if a reasonable forecast is being made is contained in the carriers' "tracking documentation" supporting the manual's implementation. This information is subject to audit, Pacific argues, and discrepancies between forecasted and actual usage will be readily apparent.[45]

53. In the *Joint Cost Order*, the Commission provided the requirements for true-ups in the event forecasted usage of shared network plant differed from actual usage of shared network plant. Those requirements did not include the imposition of any penalties over and above the basic rule that costs are to be reallocated at undepreciated baseline cost plus an interest component equal to the authorized interstate rate of return. Therefore, we will not adopt MCI's suggestion that an additional interest penalty be added to the reallocation of costs. We also do not agree that Nevada or Pacific need provide additional details on their true-up processes. The procedures that carriers will follow is provided in the Commission's *Joint Cost Order* and need not be repeated in the manual. Finally, we disagree that "nonhomogeneous" costs can be added to the pools subject to forecasting that will skew the forecasted projections. As we will discuss, *infra*, changes to the cost allocation tables require prior Commission approval. Carriers may not, once their manuals are approved, expand, combine, or alter cost pools, or amend cost allocation mechanisms without obtaining our consent. This should prove to be an effective deterrent against the evolution of pools containing "nonhomogeneous" costs.

54. *General Allocator.* The *Joint Cost Order* established a general allocator to be used whenever costs could not otherwise be assigned or attributed. Pursuant to the *Order*, unattributable costs are divided between regulated and nonregulated activities based on the ratio of total expenses assigned or attributed to regulated operations, and total expenses assigned or attributed to nonregulated operations.[46] In its manual, Nevada states that it will calculate the general allocator differently. Nevada's general allocator is a ratio of "total nonregulated product expenses" to total company expenses less administrative expenses."[47] We require Nevada to amend its manual to conform to the Commission's rules. In the *Joint Cost Order*, the Commission debated at length the structure of the general allocator. After considering a number of alternatives, the Commission found that the general allocator must be computed "by using the ratio of all expenses directly assigned or attributed to regulated and nonregulated activities, and applying that ratio to residual costs."[48] Nevada's reference to nonregulated "product" expenses, and its exclusion of administrative expenses do not reflect the Commission's requirements. Nevada must amend its manual accordingly.

55. *Marketing Allocator.* The *Joint Cost Order* established a separate marketing allocator to be used to allocate marketing costs that could not otherwise be assigned or attributed to regulated or nonregulated activities.[49] Pursuant to the *Order*, the marketing allocator is a ratio of marketing expenses in Accounts 6611-6613, as well as a portion of marketing expenses in Accounts 6623 and 6722. Pacific, in its manual, has created several marketing allocators, each related to a different function.[50] Pacific does not list all of the marketing allocators it has created, but instead provides some examples of the allocators it will use. Pacific must amend its manual to conform to the Commission's requirements for the allocation of marketing costs. The marketing allocator was designed to reflect all types of marketing activities. By creating a series of marketing allocators, Pacific's proposal may result in unattributable marketing costs being allocated with widely disparate results. We do not believe that the Commission intended such an outcome when it created the marketing allocator. Pacific is therefore required to amend its manual.[51]

56. *Official Communications.* The *Joint Cost Order* established a hierarchy of cost allocation principles for carriers to follow in formulating their cost allocation proposals. The first principle, contained in Section 64.901 of the Commission's rules, is that nonregulated activities are to be charged tariffed rates for services that are offered under tariff.[52] A corollary to that principle, contained in Section 32.27 of the Commission's rules, is that corporate affiliates are to be charged tariffed rates for assets or services provided pursuant to tariff.[53]

57. We have been unable to verify that Pacific is proposing to operate in full compliance with these principles in providing official communications." In the affiliate transaction section of its manual, Pacific states that it provides three affiliates – Pacific Telesis Group, Pacific Telesis International, and PacTel Corporation – with official communications. It is not clear whether these official communications services include services or service components that Pacific provides to others at tariffed rates.

58. In addition, Pacific's proposals for Account 6728, Other General and Administrative Expenses, does not specifically include official communications costs.[54] As a result, we cannot determine the cost pool in which Pacific is proposing to place these costs. Moreover, Pacific provides no justification or explanation for failing to apply tariffed rates to the internal telecommunications costs of its nonregulated activities. Assuming that official communications services are identical to services offered under tariff, the Commission's rules require the application of a tariffed rate.[55] Pacific must explain in amendments to its manual,

its proposed treatment of official communications and how that treatment is consistent with the Commission's rules.

59. Nevada, in its manual, is similarly oblique about its treatment of official communications. Nevada mentions official communications only once, in its allocation of Account 2123, Office Equipment. There, Nevada proposes to use the general allocator to allocate investment in its official communications cost pool. In Account 6728, Nevada does not mention official communications at all. We therefore require Nevada to explain its proposed treatment of official communications and how that treatment is consistent with the Commission's rules.

E. Specific Accounts -- Pacific Bell

Account 1220 - Inventories

60. Pacific describes for 11 cost pools within this account. The last cost pool, a residual category, is allocated by the general allocator. Consistent with the Commission's determination to minimize use of the general allocator, we believe that methods other than the general allocator exist that will better match these costs with their causes. For example, Pacific could allocate its residual cost pool using the same proportion as the combined distribution of the other cost pools in this account. A second alternative would be to allocate the accounts based on the relative regulatednonregulated split for all telecommunications plant in service accounts. Pacific must therefore amend its manual to provide for a methodology other than the general allocator for its residual cost pool.

Account 1439 - Deferred Charchs and Account 4120 - Other Accrued Liabilities

61. As noted in para. 44, *supra*, Nevada and Pacific must file proposed allocations for these accounts. At the time these accounts are included in the manuals, Pacific must provide for several cost pools for each account. For Account 1439, one pool must be restricted to the deferred charges for compensated absences, and one must be restricted to the deferred charges for equal access. The remaining pool or pools in the account should be composed of homogeneous costs, pursuant to the requirements of the *Joint Cost Order*. For Account 4120, Pacific must also isolate the costs of compensated absences in a separate pool.

Account 2002 - Property Held for Future Communications Use

62. Pacific establishes two cost pools for this account, one directly assigned to regulated and the other directly assigned to nonregulated. Pacific does not include a cost pool for shared property in this account. Pacific must verify that it does not have any property in this account that will be shared between regulated and nonregulated services. Without such verification, Pacific must provide a shared cost pool for this account and allocate it in accordance with our requirements.

Account 2121 - Buildings

63. For several of its cost pools in this account, Pacific states that it will apportion investment into pools "by internal study using functional characteristics of space usage." Pacific does not further explain the internal study it will conduct, except to describe the study as an analysis."[56] Pacific must provide additional information concerning the methods it proposes to use to apportion building investment into pools. We must review the parameters of the study in order to assess whether it will yield accurate results. If the study is in the form of an analysis of the account, we must understand the analytical process that is proposed.

Account 2122 - Furniture, Account 2123 - Office Equipment, and Account 2124 -

General Purpose Computers

64. For most of the cost pools in these accounts (except the pools that are directly assigned) Pacific identifies the investment to be apportioned into pools using two methods. One method identifies cost pools by Pacific's own subaccounts, while the second segregates costs into pools based on various ratios, *e. g.*, plant and engineering furniture ratio, plant engineering office supply equipment ratio, and marketing general purpose computer ratio. The two methods are apparently used simultaneously to apportion costs into pools. In the comments section of its cost table, Pacific provides a brief explanation of the ratios. According to the information provided, Pacific identifies cost pools by segregating its internal subaccounts according to various accounting "codes." The accounting codes divided by the total investment in the subaccount constitute the ratio used to apportion costs to cost pools. We have identified two problems with the cost apportionment proposals for this account. While Pacific's manual makes clear the mechanics of obtaining a ratio, Pacific leaves unexplained the codes it employs in calculating ratios. Furthermore, Pacific does not explain how the ratios work in tandem with its subaccounts to identify all of the costs within the account that belong in any given pool. More detail is therefore needed concerning the proposed cost pool apportionment basis. Although we are not interested in obtaining a list of Pacific's subaccounts or accounting codes, an explanation of the criteria by which costs are assigned to "codes" or subaccounts is necessary.

Account 2211 - Analog Electronic Switching Equipment, Account 2212 - Digital Electronic Switching Equipment, Account 2215 - Electro - Mechanical Switching Equipment, Account 2231 - Radio Systems, and Account 2232 - Circuit Equipment

65. For all of these accounts, Pacific has provided that a portion of the investment, as identified by a "tracking mechanism," will be directly assigned to regulated operations. The other portion of these accounts is allocated between regulated and nonregulated activities based on the peak relative nonregulated usage rule. We believe that for all but Account 2212, Pacific is presenting methodologies for allocating hypothetical joint costs that do not exist today. By providing for cost pools for nonexistant shared network plant, Pacific has introduced an unnecessary and confusing layer of detail into its manual. Furthermore, Pacific has not even explained its proposed units of measurement by which it will measure peak use. Nor has Pacific explained how it proposes to differentiate between network investment hat is assigned to regulated from that which is shared.[57] Even if Pacific could demonstrate a shared use for this investment, we would have to reject its proposed allocations for lack of detail. Pacific must therefore amend its manual to provide for the allocation of costs between regulated and nonregulated activities based

on the list of nonregulated activities it identifies in its manual, and not on hypothetical nonregulated activities that may involve shared use at some point in the future.

66. In addition, Pacific must provide the unit of measurement it intends to use to measure relative peak use of the investment in Account 2212, Digital Switches, used to provide protocol processing. We cannot accept an allocator that refers only to "various types of usage." As we have previously discussed, Pacific will also have to provide a better explanation of its "tracking mechanism" that is used to identify cost pools.

Account 2220 - Operator Systems

67. Pacific has one cost pool for this account which is directly attributed to regulated and nonregulated services based on "peak forecasts of various types of usage by tracking mechanism by type of equipment." In the comments section of its manual, however, Pacific notes that it does not foresee any joint activity in this account. As in the case of the other central office equipment accounts, Pacific is providing for a hypothetical nonregulated service that shares Account 2220 investment. We have stated above that the manual should reflect current nonregulated activities, and we will require it to assign costs in this account directly to regulated operations.

Account 2311 - Station Apparatus and Account 6311, Station Apparatus Expense

68. Pacific directly assigns the costs in these accounts to its nonregulated operations. However, the accounting treatment of station apparatus is extremely complex due to the Commission's decisions in its *Computer II Implementation* proceeding[58] and its *BOC CPE Relief Order*,[59] and the various options open to carriers in the provision of station apparatus as a result of these decisions. Pacific is therefore required to explain in the comment section of its table what it will be including in these accounts for station apparatus.

Account 2341 - Large Private Branch Exchanges

69. Pacific has directly assigned all investment in this account to nonregulated activities. We infer from this assignment that there is no regulated use of this account. Pacific should confirm our understanding by amending the comments section of the table to state affirmatively that no regulated use exists.

Account 2681 - Capital Leases

70. In its manual, Pacific has proposed to attribute capital leases to regulated or nonregulated activities based on an analysis of leased properties. Pacific proposes that most of its cost pools be allocated in proportion to related investment. This assumes that leased investment will be utilized by regulated and nonregulated activities in the same proportion as investment that is owned. We do not believe that will always be the case. We believe a better methodology for Pacific is to amend its allocation of Account 2681 to employ direct assignment of its capital leases to regulated and nonregulated activities, and also to provide a cost pool for any capital leases that reflect joint use by regulated and nonregulated activities. This latter pool must be allocated by first classifying the leases by related USOA accounts, and then allocating the costs using the methodology in the related USOA accounts.

Account 2682 - Leasehold Improvements

71. Pacific indicates that it will allocate the costs in this account in the same proportion as the related investment in Account 2121, Buildings. This methodology does not appear to present a reasonable allocator because improvements made to leasehold property may have little to do with the relative use of buildings owned by Pacific. Therefore, we require Pacific to allocate this account on a more cost causative basis, such as an individual analysis of its leashold improvements.

Account 3100 - Accumulated Depreciation

72. Pacific has proposed to group the depreciation reserve of related investment (*i. e.*, all central office equipment) and to allocate the reserve based on the related investment acoount. In the *Joint Cost Order*, the Commission required that the depreciation reserve to be allocated at the USOA account level.[60] We direct Pacific to amend its manual accordingly.

Account 4340 - Net Non - Current Deferred Operating Income Taxes

73. Pacific proposes to employ a "specific analysis" to identify the amount of its deferred taxes that are associated with its operating plant. Pacific does not provide further information on how it will conduct the analysis. In order to understand how Pacific proposes to identify these costs, it must provide some additional information on the analysis it proposes to conduct. In addition, Pacific states that it will allocate the costs in this account using the relative split of regulated to nonregulated costs in the investment accounts, as well as using "deferred tax ratios." In its narrative description of this account, Pacific states that the apportionment is conducted by applying "vintage and account sensitive deferred tax ratios" to telecommunications plant in service. We require Pacific to submit an explanation of the ratios, along with a description of how the ratios operate to produce an allocation for Account 4340.

Account 6112 - Motor Vehicle Expense

74. Pacific has two cost pools for this account. The first is Motor Vehicle Expense-Directly Assigned to Regulated; the second is "Motor Vehicle Expense-Customer and Corporate Operations-Indirectly Attributable- Joint." For the related plant account (Account 2112 - Motor Vehicles), however, Pacific's cost pools are "Motor Vehicles Plant-Indirectly Attributable Joint" and "Motor Vehicles Customer Operation Support-Indirectly Attibutable Joint." Normally, we would expect the structure of the expense account cost pools to reflect the related plant account cost pools, but in this case they do not. Pacific must explain why its cost pools structures for these accounts fails to make a direct assignment to regulated.

Account 6121 - Land and Building Expense

75. Pacific establishes two cost pools for this account. One is directly assigned to regulated and one is allocated based on the relative proportion of regulated and nonregulated cost in Account 2121. We are not convinced that this methodology is sufficiently cost causative. We believe a separate cost pool should be established for operating rent expense, that may constitute a significant portion of the expense associated with nonregulated activities. We

direct Pacific to amend its manual or to justify in amendments to this account why such a pool should not be created.

Account 6211 - Analog Electronic Switching Expense, Account 6212 - Digital Electronic Switching Expense, Account 6215 - Electro - mechanical Switching Expense, Account 6220 - Operator Systems Expense, Account 6231 - Radio Facilities Expense, and Account 6232 - Circuit Equipment Expense

76. As with the related investment accounts, Pacific appears to be providing for hypothetical joint use of its network plant in its allocations of network plant expense. The only expense account that should reflect joint use is Account 6212, which reflects the expenses associated with protocol processing. Unless some other joint use of network plant exists, all of the costs in these accounts, except for Account 6212, must be directly assigned to regulated activities, and Pacific must amend its manual to that effect.[61] With regard to Account 6212, the Commission has required that maintenance expenses associated with jointly used network plant be allocated based on a measure of current actual use. Pacific is therefore required to amend its manual to provide a separate cost pool for maintenance, and to propose a measure of usage.

Account 6531 - Power Expense

77. Pacific establishes two cost pools in this account, one directly assigned to regulated activities, and one that represents the power expense used in operating joint network plant. Given the changes we have required to the network plant accounts, Pacific may want to consider altering its cost pool structure for this account. Pacific should determine whether it is cost effective to isolate the power expense associated with protocol processing.

Account 6532 - Network Administration Expense

78. Pacific establishes four cost pools in this account, one directly assigned to regulated activities, one directly assigned to nonregulated activities, one representing administration of shared plant, and a residual pool for support costs. We have two questions regarding Pacific's proposed apportionment methods. First, Pacific states that the shared pool will be apportioned based on a "measure of actual relative use for related activities." Pacific must explain what measure it proposes to use. Additionally, Pacific's cost pool for support costs is identified by subaccounts and apportioned based on wages and salaries in subaccount 6532.1. Pacific must describe Subaccount 6532.1 so that we understand which wages and salaries are being used as the allocator.

Account 6534 - Plant Operations Administrative Expense and Account 6535 - Engineering Expense

79. For each of these accounts, Pacific residually identifies a cost pool that includes costs that are not directly assigned or otherwise attributed to regulated or nonregulated operations. Given the apparent comprehensiveness of the pools that are listed, Pacific must explain what costs are included in these pools. Additionally, Pacific must clarify whether construction-related cost are cleared from these accounts before the allocation to nonregulated operations occurs.

Account 6561 - Depreciation Expense - Telecommunicatons Plant in Service

80. Pacific has two cost pools for this account. It directly assigns one to regulated, and directly attributes the other to regulated and nonregulated operations in the same proportion as plant-in-service investment in each depreciation rate category. Although the Commission has not discussed the allocation of the depreciation expense account, it did address the allocation of the depreciation reserve, Account 3100, in the *Joint Cost Order*.[62] There, the Commission required that the depreciation reserve be disaggregated by plant account and allocated separately. We believe that carriers should adopt a similar approach with Account 6561. Therefore, each of the major plant accounts must have a separate cost pool for depreciation expense, and the allocation to regulatednonregulated activities must be based on the related plant account. We therefore require Pacific to amend its manual to structure this account so that depreciation expense follows investment accounts on an account-by-account basis.

Account 6611 - Product Management

81. Pacific divides this account into five cost pools. Two pools are either directly assigned to regulated or nonregulated activities, while a third is shared. Our questions are directed to the final two pools - salary- related costs and residual costs. The salary-related cost pool is allocated "in the same proportion as directly assigned and attributed wages and salaries within the appropriate functional area." We find this description to be vague and uninformative. Pacific must specify what wages and salaries it will use to allocate the costs in this pool. The allocation description for the residual pool contains similar language that also must be clarified. In addition, the manual indicates that the residual pool will be allocated with one of Pacific's variety of marketing allocators, an issue that we have previously addressed. We will require Pacific to justify its use of the marketing allocator for this cost pool, and to explain if a more cost causative allocator, such as time reporting, could be employed.

Accounts 6612 - Sales and 6613 - Product Advertising

82. Pacific's cost allocation descriptions for these accounts contain the same defects as Account 6611. Pacific must provide additional information on how it is allocating its salary-related costs, as well as its residual costs for both accounts. Pacific must also justify its use of the marketing allocator.

83. In addition, Pacific's treatment of Account 6613 in its cost allocation table is different from its preliminary narrative discussion, creating an ambiguity that must be resolved.[63] In its cost allocation table, Pacific states that the costs of product advertising will be divided into five cost pools: regulated, nonregulated, shared, salary-related, and residual. For its shared cost pool, Pacific states that costs will be attributed based on "actual relative use." It provides no further discussion of the measurement in the table. In its narrative discussion prefacing the cost table, Pacific explains that it will measure shared advertising based on percent of participation." Pacific states that if ten percent of an advertisement is directed to nonregulated products, then ten percent of the cost will be attributed to nonregulated. We find this attempt at attribution to be laudable, but not persuasive. Pacific has not explained how it will measure advertising on the various types of advertising media available. We doubt that it could pro-

vide a measurement standard that would produce unbiased results in all cases. Pacific must therefore amend its manual to employ the marketing allocator for this cost pool. Moreover, its discussion of the cost pool in the cost allocation table should match any narrative discussion of the account found elsewhere in the manual.

Account 6623 - Customer Service

84. Pacific divides its customer services costs into numerous cost pools and allocates those pools on diverse bases. Several of the cost allocation proposals for the pools require additional explanation. First, for its customer service center operation, Pacific proposes to use a "special study" to isolate the costs of servicing nonregulated activities. The study is not explained anywhere in the manual. In order to decide whether Pacific's cost allocation method for this cost pool is reasonable, we must obtain some information about the study proposed. The additional information provided must be sufficient for us to ascertain if the study will produce results that are both valid and reliable. Second, Pacific proposes to allocate the cost of its "local message processing" cost pool by a "Local Recorded Messages ratio." According to Pacific, "messages" includes both completed and uncompleted call attempts. Pacific does not explain, however, how it proposes to count calls and call attempts to develop its ratio. Pacific must provide additional information concerning any studies or surveys it will use to develop the messages ratio. Finally, Pacific also must provide additional detail concerning its "Bill Line Ratio" that allocates the cost of billing and collection. Pacific must make clear the processes it will use to develop this ratio.[64]

Account 6722 - External Relations

85. Pacific includes "corporate image" advertising in a residual cost pool of this account, and allocates it on the basis of the general allocator. Pacific's use of the general allocator to allocate "corporate image" advertising expenses is incorrect. The Commission created the marketing allocator to be used for unattributable marketing costs. Pacific must amend its manual accordingly.

Account 6723 - Human Resources

86. Pacific has two cost pools for this account. The first is identified by subaccount and directly assigned to regulated; the second is identified by subaccount and indirectly attributed to regulated and nonregulated operations in the same proportion as total company directly or indirectly assigned or attributed salaries. We believe that at least some portion of this account could be specifically identified by subaccount and directly assigned to nonregulated services. Pacific must explain why it does not make such an identification and assignment.

Account 6724 - Information Management

87. In the comment section of its manual opposite the cost pool that is directly assigned to nonregulated, Pacific states that software related costs are included. Pacific must clarify if it is referring solely to the nonregulated cost pool, or to the entire account.

Account 6725 - Legal

88. Pacific apportions expenses in this account into four cost pools -- directly assigned to nonregulated, directly assigned to regulated, directly attributable joint, and a residual pool using the general allocator. The directly attributable joint cost pool is allocated using "measure of actual relative use for related activities." As we have previously discussed, Pacific must explain what measure it will use. Additionally, while we do not object to Pacific's use of the general allocator to allocate residual costs in this account, we will not allow overhead cost to be included in this cost pool. Pacific must create a separate cost pool for overhead costs and allocate these costs based on the relative regulated and nonregulated split that it has obtained through direct assignment or attribution. Pacific must amend its manual accordingly to reflect this allocation procedure.

Account 6726 - Procurement

89. Pacific establishes several cost pools for this account, directly assigning some costs, while attributing others. Cost pools that are attributed reflect regulated and nonregulated accounts, general wages and salaries, or "actual relative use" measurements. We believe Pacific ought to justify its proposed allocation measures. We also direct Pacific to consider time reporting of its procurement employees as a method of allocating these costs, and require Pacific, if it elects not to employ this method, to explain why time reporting could not be used.

Account 6728 - Other General and Administrative

90. Pacific provides for two cost pools in this account, one directly assigned to regulated and one residual pool allocated based on the general allocator. Pacific must explain why its residual cost pool includes Pacific Telesis image advertising. We do not believe that image advertising costs are properly included in this account. We also require Pacific to justify why it has no nonregulated cost pool in this account.

Account 7210 - Operating Investment Tax - Net

91. Pacific has one cost pool for this account and directly attributes it to regulated and nonregulated operations in the same proportion as Account 2001 (Plant in Service). In its narrative, however, Pacific states that it allocates this account using a "vintage and account sensitive ratio of regulated and nonregulated Account 2001 to total Account 2001." Pacific must explain its allocation procedure.

Account 7370 - Special Charges

92. Pacific does not include this account in its manual. It must do so and provide for a cost pool that reflects the amount of charitable contributions made by Pacific.

Accounts 7610 - 7640 - Extraordinary Items

93. Pacific does not provide for these accounts in its cost manual. We will require Pacific to include these accounts in its manual and allocate the costs associated with the accounts based on an individiual analysis of the extraordinary items recorded.

F. Specific Accounts - Nevada Bell

Account 1220 - Inventories

94. Nevada provides two cost pools for this account--"regulated and "nonregulated." We will require Nevada to clarify that there are no common inventories to be

allocated. If some items of inventory will be used for both regulated and nonregulated activities when placed in service, Nevada must provide a cost pool for common inventories and indicate how it is to be allocated.

Account 1439 - Deferred Charges and Account 4120 - Other Accrued Liabilities

95. We have previously discussed that Nevada is required to file proposed allocations for these accounts. At the time these accounts are included in the manuals, Nevada must provide for several cost pools for each account. For Account 1439, one pool must be restricted to the deferred charges for compensated absences, and one must be restricted to the deferred charges for equal access. The remaining pool or pools in the account should be composed of homogeneous costs, pursuant to the requirements of the *Joint Cost Order*. For Account 4120, Nevada must also isolate the costs of compensated absences in a separate pool.

Account 2124 - General Purpose Computers

96. Nevada provides for three cost pools for this account. One pool, representing the residual investment in the amount, is allocated based on the general allocator. Although we recognize that Nevada has attempted to restrict the use of the general allocator by first directly assigning costs to regulated or nonregulated activities, we will require Nevada to justify the use of the general allocator to allocate the investment in this cost pool. In amendments to its manual, Nevada must explain why a more cost causative allocator is unavailable or impractical to employ.

Account 2211 - Analog Electronic Switching and Account 2212 - Digital Electronic Switching

97. For each of these accounts, Nevada has established two cost pools. One is assigned to regulated, and the other reflects shared costs, and is allocated pursuant to the peak relative nonregulated usage rule. In its comments section of the cost table, Nevada states that it currently has no shared investment in these accounts, but that when a shared use arises, it will employ "appropriate usage criteria" on which to base its forecast. MCI argues that the proposed forecasting methodology is vague.[65] Nevada responds that it would be unreasonable to require it to develop a more specific allocator for these accounts prior to developing a shared use.[66]

98. We believe that Nevada's inclusion in its manual of hypothetical allocation for these accounts introduces ambiguity into its manual that is unnecessary. Moreover, since Nevada itself admits that it has not fully developed a shared investment allocator, it is impossible for us to determine the reasonableness of an as yet unexplained allocator. We require Nevada to delete these hypothetical allocations from its manual. The revised manual it files must reflect only nonregulated activities Nevada currently provides or is planning to provide in the near future.

Account 2682 - Leasehold Improvements

99. Nevada Bell proposes to divide this account into three cost pools related to "administrative," "operations," and "central office functions. The first two pools would be allocated based on salaries and wages and the last would be allocated based on central office switching investment. Nevada also states that only seven of its buildings have leasehold improvements. We believe that a better allocator for this account may be an individual analysis of the leasehold improvements, given the small number of improvements to be tracked. Nevada is directed to amend its manual or to justify its current proposal.

Account 3100 - Accumulated Depreciation

100. In the *Joint Cost Order*, the Commission provided that cost allocation records for accumulated depreciation must be maintained at the USOA account level. [67] Nevada, however, has proposed only one cost pool for this account, to be allocated by the relative regulated and nonregulated investment in all Telecommunications Plant in Service accounts. Nevada must amend its manual to conform with the Commission's requirements.

Account 5301 - Uncollectible Revenues - Telecommunications and Account 5302 - Uncollectible Revenues - Other

101. Nevada identifies the costs included in the single cost pool for each of these accounts based on the "direct application of a monthly uncollectible revenue factor," and then directly assigns the costs to either regulated or nonregulated operations based on "relative revenues." Nevada's proposed methodology for allocating the costs of these accounts is unclear. For example, we do not understand why a "revenue factor" needs to be applied to the costs in the accounts in order to identify a cost pool so long as there is only one cost pool per account. In addition, we believe that "relative revenues," because it measures total company revenues, is a poor allocator of the different types of uncollectibles recorded in these two accounts. We believe that the accounts should be allocated based on corresponding revenue accounts. Thus, for example, telecommunications revenues must be the basis for an allocation of telecommunications uncollectibles. Nevada must therefore amend its manual.

Account 6121 - Land and Buildings Expense

102. Nevada has one cost pool for this account and indirectly allocates the pool based on the relative investment value of Land, Buildings, and Capital Leases. We do not believe that Nevada has sufficiently disaggregated this account to provide an accurate allocation between regulated and nonregulated services. Furthermore, to the extent Nevada pays rent for land and buildings, we do not believe that the rent paid bears any relationship to Nevada's investment in land and buildings. We believe Nevada should develop three separate cost pools for this account: the first for regulated expenses, to be directly assigned; the second for operating rents, to be directly assigned or attributed to regulated or nonregulated based on an analysis of the relative use of the rented asset; and the third for shared expenses, to be indirectly attributed based on the relative value of land and buildings owned and capitalized lease investments. In making amendments to its manual, Nevada must either apportion this account in the manner we have described, justify its current methodology, or propose some other mechanism for apportioning these costs, consistent with our requirements.

Account 6532 - Network Administration Expense

103. Nevada divides this account into three cost pools. One pool represents regulated costs, while another contains operations and staff costs. The third pool for this

account is identified as "Area Trunk Assignments". The pool is allocated between regulated and nonregulated activities based on the relative regulatednonregulated results of the analog, digital and electromechanical switching accounts. In order for us to evaluate these proposed methods, Nevada must explain the area trunk assignments cost pool and why it is not allocated on the basis of total central office equipment costs.

Account 6534 - Plant Operations Administration Expense and Account 6535 - Engineering Expense

104. Nevada must clarify that construction-related costs are cleared from this account prior to the allocation to nonregulated operations.

Account 6561 - Depreciation Expense - Telecommunications Plant in Service

105. Nevada has established only one cost pool for this account. The pool allocates depreciation expense based on the relative investment value of all the telecommunications plant investment accounts. Although the Commission has not discussed the allocation of the depreciation expense account, it did address the allocation of the depreciation reserve, Account 3100, in the *Joint Cost Order*. [68] There, the Commission required that the depreciation reserve be disaggregated by plant account and allocated separately. We believe that carriers should adopt a similar approach with Account 6561. Therefore, each of the major plant accounts must have a separate cost pool for depreciation expense, and the allocation to regulatednonregulated activities must be based on the related plant account. We therefore require Nevada to amend its manual to structure this account so that depreciation expense follows investment accounts on an account-by-account basis.

Account 6611 - Product Management, Account 6612 - Sales, and Account 6613 - Advertising

106. Nevada has two cost pools for each of these accounts, "regulated" and "nonregulated," that are identified by tracking codes." We have previously discussed the necessity of providing us with additional information about the cost pool apportionment process. In doing so, Nevada must explain why it has no cost pool for common expenses in any of these accounts.

Account 6623 - Customer Services

107. Nevada has three cost pools for this account -- "Business Office," "Revenue Account Office," and "Regulated." The first two are directly allocated to regulated and nonregulated operations based on "special studies", while the third is directly assigned to regulated activities. Nevada must amend its manual to explain how it distinguishes between the three cost pools. In addition, Nevada must provide sufficient information about the special studies" it proposes to use as a basis for allocation so that we can determine if the allocation method will provide results that are both valid and reliable.

Account 6712 - Planning

108. Nevada has one cost pool for this account and allocates it using the general allocator. We believe that Nevada initially must make an attempt to assign or attribute these costs before using the general allocator. We therefore require Nevada to amend its cost allocation proposal to reflect a more cost causative method for this account or to provide a detailed justification for using the general allocator.

Account 6722 - External Relations

109. Nevada established four cost pools in this account. The final cost pool, "Corporate Image Advertising," is allocated based on the "relative portion - marketing cost," which Nevada describes as the percentage of nonregulated costs in Accounts 6611, 6612, and 6613 to total costs recorded in those three accounts. Nevada's allocator is inconsistent with Commission requirements. In the *Joint Cost Order*, the Commission created a marketing allocator to allocate the costs of any unattributable marketing expenses between regulated and nonregulated activities. The marketing allocator is the ratio of all marketing expenses directly assigned or attributed to regulated or nonregulated operations. Nevada must amend its manual to employ the marketing allocator for its corporate image advertising expenses.

Account 6723 - Human Resources

110. Nevada proposes to consolidate Account 6723 into one cost pool, and to use the general allocator to allocate the costs. We believe that wages and salaries would be a more accurate method of allocating this account. We therefore require Nevada to amend its manual or to justify its use of the general allocator.

Account 6724 - Information Management

111. This account constitutes one cost pool to be allocated pursuant to the general allocator. We are not satisfied with this method of allocation, and will require Nevada to amend its manual to allocate this account based on a more cost causative methodology.

Account 6725 - Legal

112. Nevada apportions the expenses in this account into three cost pools, "regulated," "nonregulated," and "general," and allocates the general expense by use of the general allocator. While we do not object to the use of the general allocator to allocate some costs in this account, we do object to the use of the general allocator to allocate overhead costs. In view of this, Nevada must amend its manual to allocate overhead costs based on the relative regulated and nonregulated split that it has obtained through direct assignment and attribution.

Account 6726 - Procurement

113. Nevada proposes to use the general allocator to allocate this account. We believe more direct allocation methodologies may be available. We require Nevada to employ a more direct method or justify its use of the general allocator. In reviewing possible methods, Nevada should consider time reporting by its procurement employees.

Account 7220 - Operating Federal Income Taxes, Account 7230 - Operating State and Local Income Taxes, and Account 7250 - Provision for Deferred Income Taxes

114. Nevada proposes to employ "relative taxable income, net of fixed charges" to allocate its current income tax accounts. Deferred taxes would be directly assigned or allocated based on relative investment value of network plant.

115. Applying different apportionment bases to any one or group of these accounts could result in assignments of these costs that are not consistent with related book income. The net book taxes resulting from these accounts should reflect normalized taxes based on book income since under the revised USOA, interperiod tax allocations are used for accounting purposes. Moreover, Nevada's proposal to use "relative taxable income" as an allocator is unexplained. If all three of these accounts are allocated based on a specifically-defined book income, the taxes apportioned should result in apporpriate distribution between regulated and nonregulated activities. We believe that book income should be operating book income before taxes and minus interest expense. Our proposed methodology ensures that the costs are being allocated in a straightforward manner, and better reflects the costs being allocated – income taxes. We direct Nevada to amend its manual accordingly.

Account 7240 - Other Operating Taxes

116. Nevada has three cost pools for this account -- property taxes," "gross receipts taxes," and "other taxes." It uses the general allocator to allocate the "other" cost pool. We believe that Nevada initially can identify some taxes in the "other" cost pool, and directly or indirectly allocate those taxes to regulated and nonregulated operations. Nevada must therefore amend its manual to reflect that indentification or to justify its use of a general allocator.

Account 7370 - Special Charges

117. Nevada has two cost pools for this account--"abandoned projects" and "other." In order to determine a reasonable amount of charitable contributions to be included in the interstate rate base, Nevada must isolate a "contributions" pool from the "other" cost pool. Nevada may elect to allocate its contributions cost pool pursuant to the general allocator.

Account 7510 - Interest on Funded Debt

118. Nevada has one cost pool for this account, which it allocates based on relative investment in Account 2004. Nevada must provide addition information justifying this basis of allocation.

IV. PROCEDURAL MATTERS

119. In this section we address a number of procedural issues affecting the manuals. these issues are: (a) the submission of revised manuals in compliance with this Order; (b) interim reporting and retention requirements; and (c) routine submission of amendments to the manuals.

120. *Revised Manuals*. In this *Order*, we are requiring Pacific and Nevada to submit extensive amendments clarifying and changing many of their cost pool apportionment and cost allocation procedures. We have also directed Pacific and Nevada to submit additional information concerning their nonregulated activities, incidental activities, affiliate transactions, and time reporting procedures. In many cases, the additional information is needed to to form a judgment concerning the reasonableness of Pacific's and Nevada's proposed methods. In the *Joint Cost Order*, the Commission specifically provided for public comment on the manuals so that the Bureau's action on the manuals would be based on a full record. Similarly, we believe that our review of Pacific's and Nevada's proposed revisions will be aided by public comment.[69] Public comment on the revisions fulfills the *Joint Cost Order's* promise that the cost allocation methodologies would be exposed to public scrutiny prior to their implementation.

121. We will evaluate the proposed revisions, as well as the comments that we receive, before issuing an order approving or disapproving the amendments. If we disapprove a proposed revision, we shall take whatever further action is required, including mandating specific allocation methodologies or other procedures, consistent with our delegated authority to implement the manuals. All revisions that are approved or ordered shall be made retroactive to January 1, 1988.

122. In addition, to facilitate our handling of manuals and the availability of updated manuals to the public, Pacific and Nevada must file two updated copies of their revised manuals with the Commission in looseleaf form with numbered and dated pages, within 60 days of the release date of this Order.[70] When amendments are submitted, each revised page must clearly indicate the word "REVISED" and the date next to the page number. All amended language must be indicated by a verticle line in the right margin of the page.

123. *Interim reporting and record retention*. In addition, the *Joint Cost Order* directed us to develop interim reporting and record retention requirements, pending the final resolution of these issues in the *Automated Reporting Systems* docket.[71] In that proceeding, the Commission delegated to us the authority to determine the parameters of the data to be filed concerning the separation of joint and common costs.[72] The Commission also specified that the first report containing the results of the implementation of the cost manuals would be filed on June 1, 1988, covering the period January 1, 1988 to March 31, 1988. The Commission directed us to finalize our reporting standards prior to that date. Given that reporting will begin five months after the implementation of this manual, we decline to issue interim reporting formats. We believe our resources are better devoted to assuring that the permanent reporting requirements, scheduled to become effective on June 1, 1988, are properly designed and implemented. Moreover, although we will have to wait five months to see the first set of results from the companies, any misallocations that may be detected can be corrected at that time.

124. We require that carriers retain, on an interim basis, all of their accounting records together with any calculations necessary to perform cost allocations, that will be necessary to report cost allocation results to the Commission. For the interim, records must be maintained at a cost pool level.

125. *Routine amendments*. In addition to reporting and recordkeeping requirements, the larger issue of the procedures the companies shall be required to follow when updating their cost allocation manuals must be addressed. In determining how frequently updates to cost manuals should be submitted, we recognize that the accuracy of different sections of the manual will have different effects on the Commission's ability to monitor the cost allocation process. For example, it is very important for the Commis-

sion to obtain current information on the cost categories and how these are allocated between regulated and nonregulated activities. Other information, such as corporate structure, may not be quite as critical for cost allocation monitoring purposes. Furthermore, some of the information required is intended for our informational purposes so that we understand the carriers' activities, while other information in the manuals must be reviewed prior to implementation.

126. Based on an analysis of these factors, we establish the following requirements for updating Pacific's and Nevada's manuals.[73] First, there are several categories of information that require our attention before the manual is changed. These are: (1) changes to the cost categories and their allocation mechanisms; and (2) changes in the way employee time, including nonproductive time, is allocated. Each of these changes in the cost manual must be submitted at least 60 days prior to implementation. Parties seeking to comment on the proposed amendments will be provided an opportunity to do so prior to implementation and will be notified by public notice of the comment and reply dates. Proposed amendments to the manual will be deemed accepted unless the Common Carrier Bureau, pursuant to its delegated authority, stays the effectiveness of the change or rejects the change.[74]

127. Second, we will require that Pacific and Nevada timely file any changes in its corporate structure.[75] A modification to a carrier's cost manual to reflect a corporate reorganization does not require our advance approval and, therefore, does not need to be filed prior to the corporate restructuring. Finally, all other changes to the manual should be submitted quarterly, on March 31, June 30, September 30, and December 31 of each year.

128. We believe that these procedures will ensure that the ongoing process of implementing cost allocations will continue to be conducted according to the requirements set forth in the *Joint Cost Order*. At the same time, it minimizes the number of times Pacific and Nevada must seek prior Commission approval before implementing a change and provides a system which requires Commission action within a relatively short time frame.

V. ORDERING CLAUSES

129. Accordingly, IT IS ORDERED that the Nevada Bell Cost Allocation Manual and the Pacific Bell Cost Allocation Manual, File Number AAD 7-1692, ARE APPROVED, subject to the conditions set forth in this Order.

130. IT IS FURTHER ORDERED that this *Order* is effective on January 1, 1988.

131. IT IS FURTHER ORDERED that revised copies of the Cost Allocation Manual shall be submitted within 60 days from the release date of this Order.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] Nevada Bell (hereinafter "Nevada) and Pacific Bell (hereinafter Pacific) are the two exchange carriers owned by Pacific Telesis.

[2] Separation of costs of regulated telephone service from costs of nonregulated activities Report *and Order*, CC Docket No. 86-111, 2 FCC Rcd 1298 (1987) (Joint Cost Order), *modified on recon.* 2 FCC Rcd 6283 (1987) (Reconsideration Order), *petitions for further recon. pending.*

[3] 51 Fed. Reg. 43498 (Dec. 2, 1986), *to be codified at* 47 C.F.R. Part 32.

[4] Nevada did not make such a request. Nevada currently does not employ jointly-used network plant in its provision of nonregulated services.

[5] MCI Telecommunications Corporation (MCI) and International Business Machines Corporation (IBM) filed comments on both Pacific's and Nevada's manuals. Western Union Telegraph Company (Western Union) filed comments only on Pacific's manual.

[6] Pursuant to the *Joint Cost Order*, the Commission originally contemplated approving the BOCs' permanent, or "Part 32, manuals by Bureau order only if the permanent manuals differed materially from the interim, or Part 31," manuals filed by the Bell Operating Companies (BOCs). Because the BOCs' interim manuals remain pending, we will issue separate orders for the permanent Part 32 manuals.

[7] *Joint Cost Order* at 1328. The *Joint Cost Order* uses the term "cost categories" to describe groupings of costs that are homogenous in nature for cost allocation purposes. The accounting profession's term for "cost categories" is "cost pools." We will use the two terms interchangeably in this Order.

[8] *Joint Cost Order* at 1321-22.

[9] MCI Comments at 2-4.

[10] Nevada Reply at 1-2.

[11] Pacific Reply at 4-5.

[12] *See* Section IV, *infra*. If additional material we are requesting does not permit us to determine whether cost apportionment or cost allocation methods meet Commission requirements, we will order Nevada andor Pacific to adopt a methodology of our own choosing, pursuant to our delegated authority to implement the manuals.

[13] *See Joint Cost Order* at 1335 and *Reconsideration Order* at 6295. Services must be valued at the prevailing price, if the service is generally available to the public. If it is not generally available, the cost of the service will be allocated pursuant to the cost allocation standards of Section 64.901 of the Commission's Rules. For assets, transactions will also be recorded at the prevailing price, if one exists. If not, assets transferred from the affiliate to the carrier will be recorded at the lower of net book cost and fair market value, while assets transferred from the carrier to the affiliate will be recorded at the higher of net book or fair market value. *Joint Cost Order* at 1343, 1345, *amended by Reconsideration Order* 2 FCC Rcd 6283 at Appendices B and C.

[14] *Joint Cost Order* at 1328.

[15] In the *Ameritech Order*, we decided to treat Bellcore as an affiliate of the BOCs. *Ameritech Permanent Cost Allocation Manual Order*, DA87-1886, adopted December 28, 1987 at paras. 14. Neither Nevada or Pacific has included Bellcore in its list of affiliates or descriptions of affiliate transactions. Both carriers must amend their manuals to provide for Bellcore.

[16] Nevada Manual at 14.

[17] Pacific Manual at 5-6 to 5-7.

[18] *See* paras. 56-59, *infra*, for our discussion of official communications services provided to affiliates and nonregulated activities.

[19] Pacific Manual at 5-1 to 5-3.

[20] Nevada Manual at 10-12. Of these activities, Nevada states that enhanced services planning and voice mail are awaiting Commission approval. Subsequent to filing its manual, the Commission granted Nevada's proposal for enhanced services planning. Pacific and Nevada Bell Cost Allocation Plan for Enhanced Services Planning and Devleopment, *Order*, 2 FCC Rcd 1725 (1987).

[21] *Joint Cost Order* at 1328.

[22] In amending its incidental activities listing and justification, Pacific must take particular care to explain why "float charges included in billing" is an incidental activity.

[23] *Joint Cost Order* at 1321-22.

[24] In making this identification, Pacific must state which groups of employees will be studied or surveyed to determine time devoted to regulated and nonregulated operations. Pacific's manual presently indicates only those groups that "may" be subject to surveys and studies. *See* Pacific Manual at Chart 2.

[25] Pacific Manual at 2-4.

[26] Nevada Manual at 9.

[27] *Joint Cost Order* at 1319.

[28] *Reconsideration Order* at para. 41.

[29] Pacific's showing was submitted in advance of the Commission's decision in the *Reconsideration Order*.

[30] IBM Comments at 1-6. IBM submitted its comments after the Commission had announced its decision to reduce the forecast period from depreciable life to three years.

[31] Pacific Reply at 2-3.

[32] *Joint Cost Order* at 1318.

[33] Western Union Comments at 1-5. Western Union also objects to permitting carriers to allocate the costs of jointly-used central office equipment and outside plant. Western Union argues that by permitting an allocation of cost, rather than requiring a tariffed charge, the Commission is opening the door to discriminatory pricing of carrier facilities. Western Union's objection was dismissed in the *Reconsideration Order*. In that Order, the Commission stated that carriers would be required to charge a tariffed rate for services provided to nonregulated activities whenever a tariffed rate exists. The implementation of *Computer III* will provide tariffed rates for individual service components that are not available on a discrete basis today. Western Union's concerns are therefore better addressed in the *Computer III* implementation proceeding. *See* Amendment of Sections 64.702 of the Commission's Rules and Regulations, (*Third Computer Inquiry), Phase I Order, Report and Order*, 104 FCC 2d 958 (1986), *modified on reconsideration* 2 FCC Rcd 3035 (1987), *Third Computer Inquiry, Phase II Order*, FCC Rcd 3072 (1987).

[34] Pacific Reply at 3-4.

[35] Pacific Manual at 6-1 to 6-4.

[36] MCI Comments at 3-6.

[37] Pacific Reply at 5-6.

[38] Nevada Reply at 2.

[39] *See* Pacific Manual at 6-1.

[40] *Joint Cost Order* at 1328.

[41] *Automated Reporting Requirements*, 2 FCC Rcd 5770, 5775 (1987).

[42] *Joint Cost Order* at 1320.

[43] MCI Comments at 7-10.

[44] Nevada Reply at 3.

[45] Pacific Reply at 6-7.

[46] *Joint Cost Order* at 1318.

[47] Nevada Manual at 3.

[48] *Joint Cost Order* at 1318.

[49] *Joint Cost Order* at 1323-24.

[50] Pacific Manual at 6-3.

[51] In amending its manual, we caution Pacific to limit its use of the marketing allocator to a small percentage of its marketing costs. As in the case of the general allocator, the marketing allocator ratio is only meaningful if it represents a majority of total marketing expenses. *Cf. Joint Cost Order* at 1318. For both Pacific and Nevada, if we find that the marketing allocator is used to allocate a large percent of marketing expenses, we will require carriers to amend their cost allocation procedures to maximize direct assignment and attribution.

[52] *Joint* Cost Ord er, 2 FCC Rcd at 1318.

[53] Id. at 1336.

[54] The only other place Pacific mentions official communications is in its allocation of the equipment used to provide it in Account 2123, Office Equipment.

[55] While we recognize that an internal telephone line may be used for both regulated and nonregulated activities, it is still possible to derive the equivalent of a tariffed rate for nonregulated use alone. One method is to calculate the total costs of official communicationsas if it were priced pursuant to tariff, and then apply an allocator to the total, such as relative wages and salaries in the 6XXX accounts, to determine the relative split between regulated and nonregulated activities.

[56] Compare Pacific Manual at 4-3 with Pacific Cost Apportionment Table at 5.

[57] See also MCI Comments at 6.

[58] Procedures for Implementing the Detariffing of Customer Premises Equipment, CC Docket No. 81-893, 95 FCC 2d 1276 (1983) modified on reconsideration 50 Fed. Reg. 9016 (1985); Second Report and Order, 98 FCC 2d 814 (1984) (detariffing mobile CPE); Third Report and Order, 99 FCC 2d 354 (1984) (detariffing the independent local exchange carriers' state- tariffed CPE); Fourth Report and Order, 49 Fed. Reg. 47,265 (1984) (detariffing CPE owned by Western Union and the International record carriers); Fifth Report and Order, 49 Fed. Reg. 46,378 (1984) (addressing accounting procedures to be followed in detariffing CPE); Sixth Report and Order, 50 Fed. Reg. 1525 (1985) (establishing a framework for detariffing National Security and Emergency Preparedness (NSEP) CPE); and Seventh Report and Order, FCC 86-17, released January 23, 1986 (detariffing federally- tariffed CPE owned by the independents and NSEP CPE.

[59] BOC CPE Relief Order, 2 FCC Rcd 143 (1987).

[60] Joint Cost Order at 1326.

[61] The same apportionment methodolgy applies to the expense accounts for outside plant.

[62] Joint Cost Order at 1326.

[63] Compare Pacific Manual at 3-2 with Pacific Manual's Cost Allocation Table at 33-34.

[64] As in the case of Accounts 6611-6613, Pacific proposes to allocate salary-related costs based on wages and salaries within the appropriate functional area." We require Pacific to explain this proposed allocator in greater detail.

[65] MCI Comments at 6.

[66] Nevada Reply at 2-3.

[67] Joint Cost Order at 1326.

[68] Joint Cost Order at 1326.

[69] Revised manuals shall be served on all parties to the respective manual proceedings.

[70] One copy will be made available in the Accounting and Audits Division reference room, while the other will be maintained for staff use.

[71] Joint Cost Order, 2 FCC Rcd at 1328-29, para. 242.

[72] Automated Reporting Requirements Order, 2 FCC Rcd at 5775, para. 46.

[73] We plan to establish identical updating criteria for each of the BOCs. This action is consistent with the authority delegated by the Commission in the Joint Cost Order.

[74] A stay of the effectiveness of a proposed change to the manual shall not be for longer than 180 days.

[75] Of course, changes to corporate structure that also affect cost categories need to be filed in advance of implementation, as discussed supra.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Oversight of the Radio
and TV Broadcast Rules

ORDER

Adopted: December 9, 1987; Released: January 20, 1988

By the Chief, Mass Media Bureau:

1. In this *Order*, the Commission focuses its attention on the oversight of its radio and TV broadcast rules. Modifications are made herein to update, delete, clarify or correct broadcast regulations as described in the following amendment summaries:

(a) In its ongoing effort to relax or remove unneeded, restrictive regulations, the Commission, in MM Docket 84-751, adopted changes in § 73.58(b). *Report and Order* Mass Media Docket 84-751, 49 FR 49848, December 24, 1984. The modification was designed to remove greatly detailed information concerning types of equipment, installation and the care and handling of meters required to measure radio frequency current at the base of each antenna element. In addition to removing this "how to" text, the rule amendment excised the requirement that the ammeter should "be permanently installed in the antenna circuit. . .". The simplified text of the revised rule has led some licensees to presume that the amendment removed the option of using "a suitable jack and plug arrangement . . . to permit the removal of the meter from the antenna circuit so as to protect it from damage by lightning". While the extant, revised rule is silent on "jack and plug" use, it was not meant to preclude such use. In order to fully clarify paragraph (b), additional text is added (much as it read before) to clearly approve of such "jack and plug" procedures. (*See* appendix rule item 2).

(b) Parts 73 and 74 of the FCC Rules set forth regulations in other Parts of 47 CFR which apply to broadcast, experimental, auxiliary, special broadcast and other program distribution services. In part 73, this listing of applicable regulations is found in § 73.1010, Cross reference to rules in other parts. In part 74, it is given in § 74.5, bearing the same section title. In the past few years, Rule Making proceedings have wrought many amendments to 47 CFR which removed text referring to many section numbers and titles and the use of designations such as Volumes I, II and III of the rules. These two sections, 73.1010 and 74.5 are revised herein to delete or correct, as appropriate, these errors. (*See* appendix rule items 3 and 8).

(c) Any applicant for renewal of license who has had a petition to deny approval of the application filed against it may file an opposition to that petition within 30 days after the petition is filed. (*See* § 73.3584 (b)). The petitioner may, in turn, file a reply to the opposition within 20 days after the opposition is due or within 20 days after the opposition is filed, whichever is longer. A portion of § 73 3584(b) was amended in 1983 (*Report and Order*, General Docket 81-768. 48 FR 27182, June 13, 1983). In the revision, the alternative proviso to file the reply "within 20 days after the opposition is due" was inadvertently dropped, leaving the proviso standing nonsensically alone stating only "within 20 days after opposition is filed, whichever is longer. The dropped alternate proviso is returned to the rule herein. (*See* rule appendix item 4).

(d) When our rules were conformed with the public law which extended renewal periods to 5 and 7 years, respectively, for TV and radio stations (Omnibus Budget Reconciliation Act of 1981. Pub. L. 97-35, 95 Stat. 357), one reference to the old triennial renewal period went unchanged. It is found in § 73.3615, Ownership reports, in paragraph (d). The rule directs "Licensees owning more than one non-commercial educational . . . station to file only one Ownership Report at *3 year intervals* " (Emphasis added). This aberration is corrected herein by correctly requiring such reporting at 5 or 7 year intervals. (*See* appendix rule item 5).

(e) Commission policy pertaining to certification of financial qualifications by new station applicants was released via Public Notice on May 7, 1987. (52 FR 17333, May 7, 1987). This new policy is herein listed in 47 CFR Part 73 as § 73.4099, Financial qualifications, Certification of. Concurrently, the title is added to the alphabetical index of Part 73. (*See* appendix rule items 6 and 7)

(f) Section 76.611 sets forth the basic signal leakage performance criteria for Cable TV systems. Several formulas, along with descriptive text are set forth in paragraph (a)(1) of this rule. In two of the formulas, the Greek letter phi (i) is used as an equation symbol, but in the descriptive text accompanying the formulas, the symbol theta (-0) is shown. This is corrected to read i (phi) herein. (*See* appendix rule item 9).

2. No substantive changes are made herein which impose additional burdens or remove provisions relied upon by licensees or the public. We conclude, for the reasons set forth above, that these revisions will serve the public interest.

3. These amendments are implemented by authority delegated by the Commission to the Chief, Mass Media Bureau. Inasmuch as these amendments impose no additional burdens and raise no issue upon which comments would serve any useful purpose, prior notice of Rule Making, effective date provisions and public procedure thereon are unnecessary pursuant to the Administrative Procedure and Judicial Review Act provisions of 5 U.S.C. 553 (b)(3)(B).

4. Since a general notice of proposed Rule Making is not required, the Regulatory Flexibility Act does not apply.

5. Therefore, IT IS ORDERED, that pursuant to Sections 4(i), 303(r) and 5(c)(1) of the Communications Act of 1934, as amended, and Sections 0.61 and 0.283 of the Commission's Rules, Parts 73, 74 and 76 of the FCC Rules and Regulations ARE AMENDED as set forth in the attached Appendix, effective **February 25, 1988 .**

6. For further information on this *Order*, contact Steve Crane, (202) 632-5414, Mass Media Bureau.

FEDERAL COMMUNICATION COMMISSION

Alex D. Felker
Chief, Mass Media Bureau

APPENDIX

47 CFR Parts 73, 74 and 76 are amended to read as follows:

1. The authority citation for Parts 73, 74 and 76 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

2. Section 73.58 is amended by revising paragraph (b) to read as follows:

§ 73.58 Indicating instruments.

* * * * *

(b) A thermocouple type ammeter or other device capable of providing an indication of radio frequency current, meeting the requirements of § 73.1215, shall be installed at the base of each antenna element. A suitable jack and plug arrangement may be used to permit removal of the meter from the antenna circuit thereby protecting it from damage by lightning.

* * * * *

3. Section 73.1010 is revised to read as follows:

§ 73.1010 Cross reference to rules in other parts.

Certain rules applicable to broadcast services, some of which are also applicable to other services, are set forth in the following Parts of the FCC Rules and Regulations:

(a) Part 1, "Practice and Procedure.

(1) Subpart A, "General Rules of Practice and Procedure". (§§ 1.1 to 1.120).

(2) Subpart B, "Hearing Proceedings". (§§ 1.201 to 1.364)

(3) Subpart C, "Rule Making Proceedings". (§§ 1.399 to 1.430).

(4) Subpart G, "Schedule of Statutory Charges and Procedures for Payment". (§§ 1.1101 to 1.1116).

(5) Subpart H, "Ex Parte Communications". (§§ 1.1200 to 1.1216).

(6) Subpart I, "Procedures Implementing the National Environmental Policy Act of 1969". (§§ 1.1301 to 1.1319).

(b) Part 2, "Frequency Allocations and Radio Treaty Matters, General Rules and Regulations", including Subparts A, "Terminology"; B, "Allocation, Assignments and Use of Radio Frequencies"; C, "Emissions"; D, "Call Signs and Other Forms of Identifying Radio Transmissions"; and J, "Equipment Authorization Procedures".

(c) Part 13, "Commercial Radio Operators".

(d) Part 17 "Construction, Marking and Lighting of Antenna Structures

(e) Part 74, "Experimental, Auxiliary and Special Broadcast and Other Program Distributional Services" including:

(1) Subpart A, "Experimental Broadcast Stations";

(2) Subpart D, "Remote Pickup Broadcast Stations";

(3) Subpart E, "Aural Broadcast Auxiliary Stations",

(4) Subpart F, "Television Broadcast Auxiliary Stations";

(5) Subpart G, "Low Power TV, TV Translator and TV Booster Stations";

(6) Subpart H, "Low Power Auxiliary Stations";

(7) Subpart I, "Instructional TV Fixed Service"; and

(8) Subpart L, "FM Broadcast Translator Stations and FM Broadcast Booster Stations".

4. Section 73.3584 is amended by revising paragraph (b) to read as follows:

§ 73.3584 Petitions to deny.

* * * * *

(b) Except in the case of applications for new low power TV or TV translator stations, or for major changes in the existing facilities of such stations, the applicant may file an opposition to any Petition to Deny, and the Petitioner a reply to such opposition in which allegations of fact or denials thereof shall be supported by affidavit of a person or persons with personal knowledge thereof. The times for filing such oppositions and replies shall be those provided in § 1.45 except that as to a Petition to Deny an application for renewal of license, an opposition thereto may be filed within 30 days after the Petition to Deny is filed, and the party that filed the Petition to Deny may reply to the opposition within 20 days after opposition is due or within 20 days after the opposition is filed, whichever is longer. The failure to file an oppostion or a reply will not necessarily be construed as an admission of fact or argument contained in a pleading.

* * * * *

5. Section 73.3615 is amended by revising paragraph (d) to read as follows:

§ 73.3615 Ownership reports

* * * * *

(d) Each licensee of a noncommercial educational AM, FM or TV broadcast station shall file an Ownership Report on FCC Form 323-E at the time the application for renewal of station license is required to be filed. Licensees owning more than one noncommercial educational AM, FM or TV broadcast station need file only one Ownership Report at 5 year intervals for TV stations and 7 year intervals for AM and FM stations. Ownership Reports shall give the following information as of a date not more than 30 days prior to the filling of the Ownership Report:

* * * * *

6. New Section 73.4099 is added to 47 CFR Part 73 to read as follows:

§ 73.4099 Financial qualifications, Certification of.

See Public Notice, FCC 87-97, adopted March 19, 1987. 52 FR 17333, May 7, 1987.

7. The alphabetical index of 47 CFR Part 73 is amended by *adding* the following index entries:

(Following "Carrier Frequency measurements"	73.1540)
Certification of financial qualifications	73.4099(*).
(Following "Financial qualifications AM and FM	73.4100(*)
TV	73.4100(*))
Financial qualifications, Certification of	73.4099(*)

8. Section 74.5 is revised to read as follows:

§ 74.5 Cross reference to rules in other parts.

Certain rules applicable to Experimental, Auxiliary, Special Broadcast and other Program Distribution services, some of which are also applicable to other services, are set forth in the following Parts of the FCC Rules and Regulations:

(a) Part 1, "Practice and Procedure".

(1) Subpart A, "General Rules of Practice and Procedure". (§§ 1.1 to 1.120).

(2) Subpart B, "Hearing Proceedings". (§§ 1.120 to 1.364).

(3) Subpart C, "Rule Making Proceedings". (§§ 1.399 to 1.430).

(4) Subpart G, "Schedule of Statutory Charges and Procedures for Payment". (§§ 1.1101 to 1.1120).

(5) Subpart H, "Ex Parte Presentations". (§§ 1.1200 to 1.1216).

(6) Subpart I, "Procedures Implementing the National Environmental Policy Act of 1969". (?§ 1.1301 to 1.1319).

(b) Part 2, "Frequency Allocations and Radio Treaty Matters, General Rules and Regulations", including Subparts A, "Terminology"; B, "Allocation, Assignments and Use of Radio Frequencies"; C, "Emissions"; D, "Call Signs and Other Forms of Identifying Radio Transmissions"; and J, "Equipment Authorization Procedures".

(c) Part 13, "Commercial Radio Operators".

(d) Part 17, "Construction, Marking and Lighting of Antenna Structures".

(e) Part 73, "Radio Broadcast Services".

9. Section 76.611 is amended by revising the second paragraph of the descriptive text following the formulas in paragraph (a)(1) to read as follows:

§ 76.611 Cable television basic signal leakage performance criteria.

(a) * * *

(1) * * *

Formulas * * *

r1 * * *

i is the fraction of the system cable length actually examined for leakage sources and is equal to the strand miles of plant tested divided by the total strand miles in the plant;

* * * * *

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-584

In re Applications of

FAIRMONT COMMUNITY BROADCASTERS (hereafter: FCB)	File No. BPH-870309MA
FAIRMONT BROADCASTING COMPANY (hereafter: FBC)	File No. BPH-870309MC
Joseph Capobianchi dba J. C. BROADCASTING (hereafter: JCB)	File No. BPH-870310MC

For Construction Permit for a New FM Station on Channel 232A (94.3 MHz) in Fairmont, West Virginia

HEARING DESIGNATION ORDER

Adopted: December 23, 1987; Released: January 22, 1988

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mVm or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

3. Since no determination has been received from the Federal Aviation Administration as to whether the antenna proposed by the applicant below would constitute a hazard to air navigation, an issue with respect thereto will be included and the F.A.A. made a party to the proceeding. APPLICANT: FBC.

4. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

5. Accordingly, IT IS ORDERED, That, pursuant to 47 U.S.C. § 309(e), the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a reasonableN possibility that the tower height and locationN proposed by the following applicant wouldN constitute a hazard to air navigation: FBC.N

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted, if any.

6. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

7. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

8. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to 47 C.F.R. § 1.221(c), in person or by attorney, within 20 days of the mailing of this Order, not later than **February 12, 1988,** file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

9. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to 47 U.S.C. § 311(a)(2), and 47 C.F.R. § 73.3594, give notice of the hearing within the time and in the manner prescribed therein, and shall advise the Commission of the publication of such notice as required by 47 C.F.R. § 73.3594(g).

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-585

In re Applications of

FAMILY STATIONS, INC. File No. BPED-831115AK
Bridgeport, Texas

CRISWELL CENTER FOR BIBLICAL STUDIES File No. BPED-831208AF
Wichita Falls, Texas For Construction Permit for a New Noncommercial Educational FM Station on Channel 213C2

HEARING DESIGNATION ORDER

Adopted: December 23, 1987; Released: January 22, 1988

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new educational FM station.

2. *Preliminary matters.* On July 31, 1984, KAUZ-TV filed a petition to deny Family's application alleging Channel 6 TV interference. Alternatively, KAUZ-TV requested that the Commission defer action on Family's application pending the outcome of the Commission's inquiry into *Changes in the Rules Relating to Noncommercial Educational FM Broadcast Stations* (Docket No. 20735).

3. On June 20, 1985, the Commission adopted the *Memorandum Opinion and Order* in Docket 20735, 58 RR 2d 629 (1985), in an effort to resolve the long-standing problem of TV Channel 6 interference caused by noncommercial FM stations. One of the new rules contained in this *Order*, 47 C.F.R. § 73.525, was enacted to protect the reception of TV Channel 6 stations from harmful interference caused by noncommercial educational FM stations operating on Channels 201-220. The new standards adopted in 47 C.F.R. § 73.525 include a specific methodology for establishing the boundaries of an area predicted to receive interference and for determining the number of people living within that area, and the procedure allows for adjustments to be made to the facilities permitted noncommercial educational FM stations so that the amount of predicted interference to TV Channel 6 stations is limited based on specific situations.

4. Family amended its application on December 31, 1985, in response to the *Order*. The amendment, however, is deficient because it proposes vertical polarization but fails to show the predicted interference area on a County Subdivision Map of the state published for the Census as required by 47 C.F.R. § 73.525(e)(2). Accordingly, Family will be required to provide the presiding Administrative Law Judge with the required information within 30 days of the release of this Order. In addition, we note that a technical review of Family's amendment indicates that the modification proposed would provide the required protection to KAUZ-TV's reception and thereby will comply with 47 C.F.R. § 73.525 once Family amends its application as directed above. Accordingly, KAUZ-TV's petition will be granted to the extent indicated above.

5. Applicants for new broadcast stations are required by 47 C.F.R. § 73.3580 to give local notice of the filing of their applications. We have no indication that Criswell published the required notice. To remedy this deficiency, Criswell must publish local notice of the application, if it has not already done so, and so inform the presiding Administrative Law Judge within 30 days of the release of this Order, or an appropriate issue will be specified by the Judge.

6. Neither applicant has indicated whether an attempt has been made to negotiate a share-time arrangement. Therefore, an issue will be specified to determine whether a share-time arrangement between the applicants would be the most effective use of the frequency and thus better serve the public interest. *Granfalloon Denver Educational Broadcasting, Inc.*, 43 Fed. Reg. 49560 (October 24, 1978). It should be noted that our action specifying a share-time issue is not intended to preclude the applicants, either before the commencement of the hearing or at any time during the course of the hearing, from participating in negotiations with a view toward establishing a share-time agreement between themselves.

7. The respective proposals, although for different communities, would serve substantial areas in common. Consequently, in addition to determining, pursuant to 47 U.S.C. § 307(b), which of the proposals would better provide a fair, efficient, and equitable distribution of radio service, a contingent comparative issue will also be specified.

8. Inasmuch as it appears that there would be a significant difference in the size of the areas and populations which would receive service from the proposals and this proceeding involves competing applications for noncommercial educational facilities, the standard areas and populations issue will be modified in accordance with the Commission's prior action in *New York University*, FCC 67-673, released June 8, 1967, 10 RR 2d 215 (1967). Thus, the evidence adduced under this issue will be limited to available noncommercial educational FM signals within the respective service areas.

9. Except as indicated above, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

10. Accordingly, IT IS ORDERED, That, pursuant to 47 U.S.C. § 309(e) the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon& the following issues:

1. To determine: (a) the number of other reserved channel noncommercial educational FM services available in the proposed service area of each applicant, and the area and population served thereby; (b) whether a share-time arrangement between the applicants would result in the most effective use of the channel and thus better serve the public interest and, if so, the terms and conditions thereof; and (c)

in light of 47 U.S.C. § 307(b), which of the proposals would better provide a fair, efficient and equitable distribution of radio service.

2. To determine, in the event it is concluded that a choice between the applications should not be based solely on considerations relating to 47 C.F.R. § 307(b), the extent to which each of the proposed operations will be integrated into the overall educational operation and objectives of the respective applicants; and whether other factors in the record demonstrate that one applicant will provide a superior FM educational broadcast service.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted, if any.

11. IT IS FURTHER ORDERED, That KAUZ-TV's petition to deny IS GRANTED to the extent indicated above and IS DENIED in all other respects.

12. IT IS FURTHER ORDERED, That, within 30 days of the release of this Order, Family shall file with the presiding Administrative Law Judge a County Subdivision Map of the state published for the Census which shows the predicted interference area as required by 47 C.F.R. § 73.525.

13. IT IS FURTHER ORDERED, That within 30 days of the release of this Order, Criswell shall inform the presiding Administrative Law Judge as to whether local notice of filing of the application has been published.

14. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

15. IT IS FURTHER ORDERED, That to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to 47 C.F.R. § 1.221(c), in person or by attorney, within 20 days of the mailing of this Order, not later than **February 12, 1988**, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

16. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to 47 U.S.C. § 311(a)(2) and 47 C.F.R. § 73.3594, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by 47 C.F.R. § 73.3594(g).

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-581

In re Applications:

MARSHALL M. BANDY (hereafter Bandy)	File No. BPH-870105ME
WERNER WORTSMAN (hereafter Wortsman)	File No. BPH-870106MC
LIONEL F. PYE, JR. (hereafter Pye)	File No. BPH-870106ME
Paul Croft and Danny Jack White dba RINGGOLD BROADCASTING, LTD. (hereafter RBL)	File No. BPH-870107ME
RINGGOLD ASSOCIATES (hereafter Associates)	File No. BPH-870107MM
VALERIA W. WATTS (hereater Watts)	File No. BPH-870107MN
RINGGOLD FM PARTNERSHIP (hereafter Partnership)	File No. BPH-870107MG (DISMISSED)

For a new FM station
on Channel 270A
in Ringgold, Georgia

HEARING DESIGNATION ORDER

Adopted: December 21, 1987; Released: January 22, 1988

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *Partnership*. On June 15, 1987, Partnership filed a motion to dismiss its application for a new FM station in Ringgold, Georgia. This motion will herein be granted.

3. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mVm or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

4. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, best serve the public interest.

2. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted, if any.

5. IT IS FURTHER ORDERED, That the application filed by Partnership IS HEREBY DISMISSED.

6. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

7. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, not later than **February 21, 1988,** file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

8. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 87-621

In re Applications of

HI-BAND BROADCASTING COMPANY — File No. 6169-CM-P-80

and

MICROBAND CORPORATION OF AMERICA — File No. 10861-CM-P-80

For Construction Permits in the Multipoint Distribution Service for a new station on Channel 1 at ThibodauxHouma, Louisiana.

MEMORANDUM OPINION AND ORDER

Adopted: December 17, 1987; Released January 22, 1988

By the Common Carrier Bureau:

1. For consideration are the above-referenced applications. These applications are for construction permits in the Multipoint Distribution Service and they propose operations on Channel 1 at ThibodauxHouma, Louisiana. The applications are therefore mutually exclusive and require comparative consideration. There are no petitions to deny or other objections under consideration.

2. Upon review of the captioned applications, we find that these applicants are legally, technically, financially, and otherwise qualified to provide the services they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

3. Accordingly, IT IS HEREBY ORDERED, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. § 309(e) and Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, the above-captioned applications ARE DESIGNATED FOR HEARING, in a CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered:[1]

(a) The relative merits of each proposal with respect to efficient frequency use, particularly with regard to compatibility with co-channel use in nearby cities and adjacent channel use in the same city;

(b) The anticipated quality and reliability of the service proposed, including installation and maintenance programs; and

(c) The comparative cost of each proposal considered in context with the benefits of efficient spectrum utilization and the quality and reliability of service as set forth in issues (a) and (b).

4. IT IS FURTHER ORDERED, That Hi-Band Broadcasting Company, Microband Corporation of America and the Chief of the Common Carrier Bureau, ARE MADE PARTIES to this proceeding.

5. IT IS FURTHER ORDERED, That parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of Section 1.221 of the Commission's Rules, 47 C.F.R. § 1.221.

6. The Secretary shall cause a copy of this Order to be published in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

James R. Keegan
Chief, Domestic Facilities Division
Common Carrier Bureau

FOOTNOTE

[1] Consideration of these factors shall be in light of the Commission's discussion in *Frank K.* Spain, 77 FCC 2d 20 (1980).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 86-180

In re Applications of

GALI COMMUNICATIONS, INC. — File No. BPCT-851230KE

URBAN MINORITY BROADCASTING INSTITUTE, INC. — File No. BPCT-860212KF

STANLY GROUP BROADCASTING, INC. — File No. BPCT-860212KH

David H. Wagner dba DENVER COMMUNICATIONS — File No. BPCT-860212KI

CONTINENTAL DIVIDE TELEVISION PARTNERS, LTD. — File No. BPCT-860212KK

AMADOR BROADCASTING LIMITED — File No. BPCT-860212KM

LOMAS DE ORO BROADCASTING CORPORATION — File No. BPCT-860212KO

For Construction Permit
for a New Television Station
Denver, Colorado

ORDER

Adopted: January 13, 1988; Released: January 22, 1988

By the Review Board:

1. Four of the applicants in this multi-party proceeding, Lomas De Oro Broadcasting Corporation ("Lomas"), Gali Communications, Inc. ("Gali"), Urban Minority Broadcasting Institute, Inc. ("Urban"), and Continental Divide Television Partners, Ltd. ("Continental"), have filed on January 11, 1988 a joint request for approval of agreements.

2. The proposed settlement agreements contemplate that Gali, Urban, and Continental will dismiss their respective applications in return for payments of90,000,50,000, and225,000, respectively, from Lomas should that applicant or any merged or successor entity to Lomas become the permittee for Channel 50 in Denver. The agreements incorporate the parties' declarations under penalty of perjury that their applications were not filed for the purpose of reaching or carrying out a settlement and that the proffered agreements are in the public interest because they will facilitate and expedite a resolution of this proceeding by reducing the number of competing applicants. The parties have thus complied with the requirements of 47 CFR §73.3525(a)(1) and (a)(2), which implements 47 U.S.C. §311(c), and their joint request will be granted.

3. ACCORDINGLY, IT IS ORDERED, That the Joint Request for Approval of Agreements filed January 11, 1988 IS GRANTED; that the settlement agreements ARE APPROVED; and that the applications of Gali Communications, Inc., Urban Minority Broadcasting Institute, Inc., and Continental Divide Television Partners, Ltd. ARE DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Joseph A. Marino
Chairman, Review Board

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-110

In re Applications of

EMPIRE STATE BROADCASTING CORPORATION (WWKB, Buffalo, New York) — File No. BR-840201WQ

For Renewal of License

BURSAM COMMUNICATIONS CORP. (WTHE, Mineola, New York) — File No. BP-840430AC

For Construction Permit

ERRATUM

Released: January 22, 1988

The *Memorandum Opinion and Order,* FCC 87R-68, released December 31, 1987 is corrected as follows:

Paragraph 2, lines 27-29 should be not be indented.

Paragraph 3, line 23, change "*note* " to "note"

Paragraph 9, line 24, change "*and all other comparative considerations between* " to "and all other comparative considerations between"

Paragraph 9, line 25, change "*the contending applicants become academic* " to "the contending applicants become academic"

Footnote 15, line 7, the Court's quotation ends with word "context". The legal citation following the quotation, and subsequent sentence should be removed from the quotation, dropped to the next double spaced line, and not indented.

By Direction of the Review Board

Allan Sacks
Chief for Law

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AMERICAN RADIO RELAY LEAGUE, INC. FOIA No. 87-48

On Request for Inspection of Records

MEMORANDUM OPINION AND ORDER

Adopted: December 21, 1987; Released: January 20, 1988

By the Commission:

1. The Commission has under consideration an Application for Review filed by the American Radio Relay League, Inc. (American Relay) seeking review of a May 19, 1987 initial ruling, entered by the Chief, Field Operations Bureau (FOB). By its action, FOB denied American Relay's request for inspection of records under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. American Relay sought access to the following categories of records relating to Land Mobile Radio Service spectrum allocation needs:

> 1) Any and all documents relating to or constituting a 1985 Field Operations Bureau report or reports concerning land mobile spectrum occupancy and assigned frequency use in ten of the largest land mobile markets;
>
> 2) Any and all documents relating to a 1983 report of the Office of Engineering and Technology (formerly the Office of Science and Technology) concerning the projected spectrum needs of the Land Mobile Radio Service; and
>
> 3) Any and all documents relating to a 1983 report of the Office of Plans and Policy concerning the projected spectrum needs of the Land Mobile Radio Service.

2. Following discussions with the FOB staff, American Relay narrowed the scope of its request to two memorandums commenting upon a draft report that the Private Radio Bureau had prepared. The draft constitutes an early version of a final *Report* entitled *Future Private Land Mobile Telecommunications Requirements*, released by Public Notice in August, 1983 in PR Docket 82-10. *See* 47 Fed. Reg. 4737 (Feb. 2, 1982). In that proceeding, the Commission reviewed a broad area of private land mobile telecommunications requirements through the end of the century. The *Report* concluded that the allocation of additional spectrum would be necessary to meet future demand for use of the service. In response to the FOIA request, FOB advised American Relay that the memorandums constituted advice, recommendations and opinions within the Commission's predecisional, deliberative process framework. As a result, FOB determined that the requested documents fell within the intra-agency memorandum exemption from mandatory disclosure and withheld the documents pursuant to FOIA Exemption 5. 5 U.S.C. § 552(b)(5).

3. On review, American Relay argues that it is unclear whether the documents qualify for withholding since FOB did not precisely indicate the Commission actions to which the documents were related. Further, American Relay requests that we release those portions of the documents, such as cover memorandums and technical conclusions, which, the requester contends, are subject to mandatory disclosure under FOIA.

4. In this context, Exemption 5 protects from mandatory disclosure "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." 5 U.S.C. § 552(b)(5). We find that the documents are within the scope of the deliberative process privilege embodied within Exemption 5, and are, therefore, exempt from mandatory disclosure. Each is a predecisional memorandum commenting upon a draft report, the final product of which, has been of analytical significance in the Commission's resolution of spectrum allocation issues in a variety of rulemaking proceedings. These include the *900 MHz Release and Band Plan*, Gen. Docket 84-1233, 50 Fed. Reg. 1582 (Jan. 11, 1985); *Narrowband Technologies in the Private Land Mobile Radio Services*, PR Docket 84-279, 50 Fed. Reg. 13586 (April 5, 1985), *Private Land Mobile UHF Sharing*, Gen. Docket 85-172, 50 Fed. Reg. 25587 (June 20, 1985) and *Land Mobile use of 421 - 430 MHz* Gen. Docket 85- 113, 50 Fed. Reg. 40016 (Oct. 1, 1985). Each contains advice and recommendations of a substantive nature intended to assist the Private Radio Bureau, and ultimately the Commission, in assessing land mobile spectrum requirements and in resolving related issues pending before the Commission.

5. Any communication the disclosure of which would reveal the deliberative process of an agency is exempt from mandatory disclosure. *See* NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 150 n.1 (1975); Arthur Anderson & Co. v. IRS, 679 F.2d 255, 258 (D.C. Cir. 1982); Vaughen v. Rosen, 523 F.2d 820, 1143 (D.C. Cir. 1975). Release of the memorandums at issue each containing the unvarnished views of staff members concerning a matter of significant impact before the Commission, would "harm the quality of Commission decisionmaking" by diminishing open and frank discussion of controversial issues. *See* NLRB v. Sears, Roebuck & Co., 421 U.S. at 151. While the Commission may exercise discretionary authority to release protected documents, 47 C.F.R. § 0.461(f)(4), we find that American Relay has failed to make any showing that the public interest benefits of disclosure would outweigh its potential harmful consequences.

6. We also affirm FOB's determination that the documents do not contain any reasonably segregable factual material subject to release. The technical conclusions of each document have served to shape and refine the final staff report to the Commission. As such, these conclusions are also essential elements of the Commission's deliberative process.

7. Accordingly, IT IS ORDERED, That the Application for Review filed by the American Radio Relay League, Inc. IS DENIED. Judicial review of this action may be sought pursuant to 5 U.S.C. § 552(a)4(B).

The officials responsible for this action are the following Commissioners: Dennis R. Patrick, Chairman. James H. Quello, Mimi Weyforth Dawson, Patricia Diaz Dennis.

FEDERAL COMMUNICATIONS COMMISSION

William J. Tricarico
Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-157

In re Application of

ECHONET CORPORATION File No. BPCT-870212KH

For Construction Permit for New TV Station, Billings, Montana

NOTICE

Released: January 25, 1988

Chief Administrative Law Judge John B. Fitzpatrick's Summary Decision in this proceeding (FCC 87D-41) was released November 18, 1987. No exceptions have been filed, and the Commission has not ordered a review of the Summary Decision on its own motion. Fifty days have passed since public release of the Summary Decision. Pursuant to Section 1.276 of the Commission's Rules, the Summary Decision became effective January 7, 1988, without action by the Commission.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster, III
Acting Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-165

In re Application of

PYRAMID COMMUNICATIONS, LTD. File No. BPH-850712XY

For Construction Permit for New FM Station, Leland, Michigan

NOTICE

Released: January 25, 1988

Chief Administrative Law Judge Thomas B. Fitzpatrick's Summary Decision in this proceeding (FCC 87D-42) was released November 18, 1987. No exceptions have been filed, and the Commission has not ordered a review of the Summary Decision on its own motion. Fifty days have passed since public release of the Summary Decision. Pursuant to Section 1.276 of the Commission's Rules, the Summary Decision became effective January 7, 1988, without action by the Commission.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster, III
Acting Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-248

In re Application of

DON H. BARDEN File No. BPH-860203OW

For Construction Permit for New FM
Station, Coal City, Illinois

NOTICE

Released: January 25, 1988

Administrative Law Judge John M. Frysiak,' Summary Decision in this proceeding (FCC 87D-43) was released November 24, 1987. No exceptions have been filed, and the Commission has not ordered a review of the Summary Decision on its own motion. Fifty days have passed since public release of the Summary Decision. Pursuant to Section 1.276 of the Commission's Rules, the Summary Decision became effective January 13, 1988, without action by the Commission.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster, III
Acting Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-143

In re Application of

William D. Silverson dba WATERLOO TELEVISION — File No. BPCT-8612165K

For Construction Permit for New TV Station, Waterloo, Iowa

NOTICE

Released: January 25, 1988

Administrative Law Judge Joseph Stirmer's Summary Decision in this proceeding (FCC 87D-45) was released December 3, 1987. No exceptions have been filed, and the Commission has not ordered a review of the Summary Decision on its own motion. Fifty days have passed since public release of the Summary Decision. Pursuant to Section 1.276 of the Commission's Rules, the Summary Decision became effective January 22, 1988, without action by the Commission.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster, III
Acting Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-612

In the Matter of

Amendment of Section 73.202(b), RM-5873
Table of Allotments,
FM Broadcast Stations.
(North Little Rock, Arkansas)

NOTICE OF PROPOSED RULE MAKING

Adopted: December 22, 1987; Released: January 25, 1988

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed by Earl N. Hodges, dba Mid-South Frequency Monitoring Service (petitioner), seeking the allotment of Channel 299A to North Little Rock, Arkansas, as that community's first local FM service. Petitioner states his intention to apply for the channel, if it is allotted.

2. Petitioner's request to allot Channel 299A to North Little Rock cannot be considered since that channel was allotted to Wrightsville, Arkansas in MM Docket No. 86-154. The two communities are 10.6 kilometers apart, whereas a minimum distance separation of 105 kilometers (65 miles) is required between co-channel Class A stations. However, in an effort to accommodate petitioner's proposal, a staff engineering study has determined that Channel 266A can be allotted to North Little Rock in conformity with the requirements of Section 73.207(b) of the Commission's Rules, provided the transmitter therefor is restricted to an area 9.3 kilometers (5.8 miles) northwest[1] of the community to avoid short-spacing to Station KLRE-FM (Channel 213C2), Little Rock, Arkansas, as well as Channel 267A at Pine Bluff, Arkansas.[2] Thus, we will propose the allotment of Channel 266A to North Little Rock.

3. In view of above, and since the proposed allotment could provide a first local FM service to North Little Rock, the Commission seeks comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to that community, as follows:

	Channel No.	
City	Present	Proposed
North Little Rock, Arkansas	–	266A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **March 17, 1988,** and reply comments on or before **April 1, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, as follows:

Earl N. Hodges
Mid-South Frequency Monitoring Service
4004 Clay Drive
Jonesboro, AR 72401

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Mark N. Lipp
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will

be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

FOOTNOTES

[1] Reference coordinates of the restricted site are 34-49-06, 92-19-58.

[2] Channel 267A was allotted to Pine Bluff, AR in MM Docket 84-231, for which three applications have been filed. The site restriction also negates a conflict with those applications.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-613

In the Matter of

Amendment of Section 73.202(b), RM-6055
Table of Allotments,
FM Broadcast Stations.
(Jenkins, Kentucky)

NOTICE OF PROPOSED RULE MAKING

Adopted: December 22, 1987; Released: January 25, 1988

By the Chief, Allocations Branch:

1. Purusant to the request of Kincraft Industries, Inc. (petitioner), licensee of Station WIFX-FM, Channel 232A, Jenkins, Kentucky the Commission considers herein a petition for rule making proposing to modify its license for a Class A station operating on Channel 232A to a Class C2 station operating on the same channel. Petitioner has submitted information in support of the proposal.

2. The modification can be made in compliance with the minimum separation requirements with a site restriction 12.8 kilometers (8 miles) west of Jenkins to avoid short spacing to Station WOAY-FM, Oak Hill, West Virginia. As requested, we shall propose to modify the license of Station WIFX-FM from a Class A to a Class C2 station operating of Channel 232. In accordance with Section 1.420(g) of the Rules, we shall not accept competing expressions of interest nor require that the petitioner demonstrate the availability of an additional equivalent channel.

3. Accordingly, in order to provide Jenkins, Kentucky, with its first wide coverage area FM service, the Commission proposes to amend the FM Table of Allotments, Section 73.202(b) of the Rules, with regard to the following community:

	Channel No.	
City	Present	Proposed
Jenkins, Kentucky	232A	232C2

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **March 17, 1988,** and reply comments on or before **April 1, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Richard J. Hayes, Jr., Esq.
1359 Black Meadow Road
Spotsylvania, Virginia 22553
(Counsel to Petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Montrose H. Tyree, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Mark N. Lipp
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-614

In the Matter of

Amendment of Section 73.202(b), RM-5996
Table of Allotments,
FM Broadcast Stations.
(Valley Station, Kentucky)

NOTICE OF PROPOSED RULE MAKING

Adopted: December 22, 1987; Released: January 25, 1988

By the Chief, Allocations Branch:

1. At the request of Mid-America Communications, Inc. (petitioner), the Commission has before it a petition for rule making proposing the allotment of Channel 290A to Valley Station, Kentucky, as that community's first FM channel. Petitioner has furnished information in support of the proposal and stated its intention to apply for the channel, if allotted. The channel can be allocated consistent with the Commission's minimum separation requirements.

2. In view of the fact that the proposed allocation could provide a first FM service to Valley Station, Kentucky, the Commission believes it is appropriate to propose amending the FM Table of Allotments, Section 73.202(b) of the Commission's Rules with regard to the following community:

	Channel No.	
City	Present	Proposed
Valley Station, Kentucky	—	290A

3. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

4. Interested parties may file comments on or before **March 17, 1988,** and reply comments on or before **April 1, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Gene A. Bechtel, Esq.
Bechtel & Cole, Chartered
2101 L Street, N.W.
Suite 502
Washington, D.C. 20037
(Counsel to Petitioner)

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

6. For further information concerning this proceeding, contact Montrose H. Tyree, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Mark N. Lipp
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-615

In the Matter of

Amendment of Section 73.202(b), RM-5877
Table of Allotments,
FM Broadcast Stations.
(Virgie, Kentucky)

NOTICE OF PROPOSED RULE MAKING

Adopted: December 22, 1987; Released: January 25, 1988

By the Chief, Allocations Branch:

1. At the request of Shelby Valley Broadcasting, Inc. (petitioner), the Commission has before it a petition for rule making proposing the allotment of Channel 298A to Virgie, Kentucky, as that community's first FM channel. Petitioner has furnished information in support of the proposal and stated its intention to apply for the channel, if allotted. The channel can be allocated consistent with the Commission's minimum separation requirements.

2. Petitioner states that Virgie is an unincorporated community of 600 persons located approximately 12 miles southwest of Pikeville, Kentucky. Generally, if a community is incorporated or is listed in the U.S. Census, that is sufficient to satisfy its status as a "community". However, absent such recognizable community factors, the petitioner must present the Commission with sufficient information to demonstrate that such a place has social, economic or cultural indicia to qualify it as "community" for allocation purposes. *See* , e.g., *Ansley, Alabama*, 46 FR 58688, December 3, 1981; *Cascade Village, Colorado*, 48 FR 19917, May 3, 1983; and *Ellwood, California*, 50 FR 13011, April 3, 1985. Here petitioner states that Virgie has a post office and is listed in the *Rand McNally Road Atlas*, 1985 edition. Therefore, we shall propose the allotment to Virgie for the purpose of eliciting comments on this issue. We have made no finding at this stage as to Virgie's status as a community. We request that petitioner submit additional information to demonstrate whether there are any business, social organizations or governmental units that identify themselves specifically with the "community" of Virgie, Kentucky.

3. In view of the fact that the proposed allocation could provide a first FM service to Virgie, Kentucky, the Commission believes it is appropriate to propose amending the FM Table of Allotments, Section 73.202(b) of the Commission's Rules with regard to the following community:

	Channel No.	
City	Present	Proposed
Virgie, Kentucky	–	298A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **March 17, 1988,** and reply comments on or before **April 1, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Lauren A. Colby, Esq.
10 East Fourth Street
P.O. Box 113
Frederick, MD 21701
(Counsel to Petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Montrose H. Tyree, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Mark N. Lipp
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the

Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-207

In the Matter of

Amendment of Section 73.202(b),	RM-5709
Table of Allotments,	RM-6064
FM Broadcast Stations.	RM-6065
(Accomac and Deltaville, Virginia; and Moyock, North Carolina)[1]	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: December 24, 1987; Released: January 25, 1988

By the Chief, Allocations Branch:

1. At the request of C & R Communications (petitioner), the Commission considers herein the *Notice of Proposed Rule Making*, 2 FCC Rcd 3740 (1987), proposing the allotment of Channel 222B1 to Accomac, Virginia, as that community's first local FM service. Petitioner filed supporting comments reaffirming its interest in the allocation. In response to the *Notice*, comments and counterproposals[2] were filed by: (1) Golden Rule Organization Workshop, Inc. (Golden Rule), requesting the allotment of Channel 222A to Deltaville, Virginia, as a first FM service (RM-6064); and (2) Southland Communications, Inc. (Southland), licensee of Station WOFM(FM), Channel 221A at Moyock, North Carolina, seeking the substitution of Channel 221B1 for Channel 221A and modification of its license to specify operation on the higher class channel (RM-6065). The counterproposals are mutually exclusive to the Accomac proposal since the communities are separated by less than the required minimum distance separation requirements of 138 kilometers (86 miles) for cochannel Class B1 to A allotments at Deltaville or 114 kilometers (71 miles) for first adjacent Class B1 to B1 allotments at Moyock. There is no conflict between the Deltaville and Moyock proposals. Petitioner and Golden Rule each filed reply comments.

2. Golden Rule, in its comments, asserts that Deltaville is more deserving of receiving its first FM service than Accomac. Therefore, it opposes the proposed allocation to Accomac.

3. In its comments, Southland set forth optional proposals for the allotment of Channel 221B1 to Moyock and either Channel 257B1 or 222A to Accomac. Petitioner responded in support of the allocation of Channel 257B1 to Accomac, restating its interest in applying for the new channel. Golden Rule, in its reply comments, restated its position on the Deltaville proposal.

4. Southland failed to demonstrate that its proposal to allot Channel 221B1 to Moyock does not impact the Grade B contour of any existing Channel 6 station or allotment. *See First Report and Order* in MM Docket No. 86-144, 2 FCC Rcd 660 (1987). However, we have determined that the proposal does not cause interference to the Grade B contour of TV Channel 6 Station WTVR-TV at Richmond, Virginia, which is the closest TV channel 6 to the proposal. Therefore, Channel 221B1 can be allocated to Moyock. We have also confirmed the availability of Channel 257B1 to Accomac and Channel 222A to Deltaville. The channels can be allocated to the three communities in compliance with the minimum distance separation requirements of Section 73.207 of the Commission's Rules. Thus, allocations are available for all three communities without the need for a community comparison.

5. Channel 257B1 can be allocated to Accomac provided a site restriction of 6.7 kilometers (4.2 miles) northeast of the community is imposed in order to avoid a short spacing to Channel 256A (a vacant allotment) at Gloucester, Virginia. Channel 221B1 can be allocated to Moyock as a substitute for Channel 221A from a site 20.1 kilometers (12.5 miles) north of the city. [3] This site is located in Zone I, where Class B1 stations are permitted. Channel 222A can be allocated to Deltaville without the imposition of a site restriction.

6. We believe the public interest would be served by providing Accomac and Deltaville, Virginia each with a first local FM service and a wider coverage area station at Moyock, North Carolina. In accordance with Section 1.420(g) of the Commission's Rules, we shall authorize the modification of the license of Station WOFM(FM) to specify operation on the higher class co-Channel 221B1 in lieu of Channel 221A.

7. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **March 10, 1988,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, as follows:

City	Channel No.
Moyock, North Carolina	221B1
Accomac, Virginia	257B1
Deltaville, Virginia	222A

8. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Station WOFM(FM), Moyock, North Carolina IS MODIFIED, tc specify operation on Channel 221B1 in lieu of Channel 221A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

9. The window period for filing applications for Channel 222A at Deltaville, Virginia and Channel 257B1 at Accomac, Virginia will open on **March 11, 1988,** and close on **April 11, 1988.**

10. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

11. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530. Questions related to the application process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632-6908.

FEDERAL COMMUNICATIONS COMMISSION

Mark N. Lipp
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] The communities of Deltaville, Virginia and Moyock, North Carolina have been added to the caption.

[2] Public Notice of the counterproposals was given on September 4, 1987, Report No. 1675.

[3] The coordinates for this site are: 36-42-00 and 76-06-30.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re application of

EDM CELLULAR File No. 65100-CL-P-200-A-86

For authority to construct and
operate a Domestic Public Cellular
Radio Telecommunications System on
Frequency Block A in the
Parkersburg-Marietta, West Virginia-
Ohio MSA

MEMORANDUM OPINION AND ORDER

Adopted January 11, 1988 ; Released: January 25, 1988

By the Chief, Mobile Services Division:

INTRODUCTION

1. EDM Cellular (EDM) was selected as the tentative selectee for the Parkersburg-Marietta, West Virginia-Ohio MSA in a lottery conducted on September 29, 1986. Kenneth L. Ramsey (Ramsey), the sixth-ranked applicant in the lottery, filed a petition to deny on January 5, 1987. EDM filed a reply to the petition to deny on February 4, 1987. On May 8, 1987 Ramsey filed a letter supplement to his petition to deny and on the same day, Fred Chapin Marsh II (Marsh) filed an Informal Petition to Defer Action. On June 19, 1987, EDM filed a letter in response to the Ramsey and Marsh informal objections.

2. Ramsey argues, in his petition to deny, that the EDM application should be dismissed because (1) the certification required by Section 22.913(b)(3) is incorrect because the required FAA notification had not yet been obtained; (2) EDM failed to submit a firm financial commitment as required by Section 22.917(b) because the letter from Motorola, the financing institution, is conditioned on certain events which have not yet occurred; (3) EDM's application is defective for failure to timely disclose EDM's pre-filing settlement agreement; (4) the financial commitment letter from Motorola suggests that EDM has relinquished control of the facility to Motorola in violation of the Commission's Rules governing transfers of control; and (5) EDM has violated Section 22.13(a)(1) by its failure to disclose certain real parties in interest behind its application.

3. EDM responds first by challenging Ramsey's standing to file a petition to deny. Next, EDM argues that (1) the certification in EDM's application is correct because it was signed under the good faith belief that the FAA would shortly be notified; (2) the Motorola letter did express a firm commitment because the conditions in the financing agreement were merely customary, not contingencies which would vitiate Motorola's commitment; (3) while EDM entered a pre-filing agreement, it executed the application before it entered this agreement and therefore, there was not enough time to re-execute the application to include the settlement agreement before the application was filed, although it notified the Commission at the first opportunity; (4) EDM did not relinquish control of the proposed facilities to Motorola because, *inter alia*, while the commitment letter does contemplate a review of system design and capacity, it does not reserve to Motorola the right to make any decisions regarding system control; and (5) EDM did not violate the "real party in interest" rules by not disclosing the business of which its principal holds a 5% or more interest because this ownership interest is in an engineering and economics consulting firm, not a Part 22 licensee to which the Commission's rules apply.

STANDING

4. Ramsey has standing to challenge EDM's application. Section 309(d) of the Communications Act of 1934 requires that the petition contain specific allegations of fact showing that the petitioner is a party in interest. Ramsey indicated that he was an applicant for the non-wireline authorization to build and operate a cellular system to serve the Parkersburg-Marietta, West Virginia-Ohio MSA. We find that this is sufficient to establish his standing to challenge the above-referenced application.

CERTIFICATION

5. EDM's 401 indicates that the FAA was notified of the proposed antenna structures on April 25, 1986, one day after the applicant executed the Section 22.913(b)(3) certification. Ramsey has not demonstrated that EDM did not notify the FAA of the proposed antenna structures on April 25, 1986, the date noted in EDM's 401. The Commission requires that an application be complete at the time of certification. Although Ramsey has demonstrated that EDM's certification was defective in this respect, there is no evidence in the record to suggest that EDM's application was not signed under the good faith belief that the FAA notification would be obtained on the date specified in the application. Therefore, we find that such defect is minor and does not render EDM's application unacceptable for filing.

FIRM FINANCIAL COMMITMENT

6. Ramsey claims that the Motorola letter indicates that Motorola has made no contractually binding commitment to lend money to EDM because its commitment is conditioned upon (1) receipt of the construction permit; (2) execution of Motorola's standard purchase agreement for equipment and services; (3) execution of Motorola's standard cellular financing agreement; and (4) execution of Motorola's standard guarantees, none of which has been met. First, we note that EDM paid Motorola a nonrefundable commitment fee of$1000.00 in consideration for Motorola's firm financial commitment. Next, we note that conditions, in and of themselves, do not make the contract less binding. The "condition" that EDM execute a purchase agreement is merely a standard requirement that does not make the agreement's commitment any less firm. Ramsey's argument that the commitment is conditioned upon EDM's obtaining a construction permit is similarly lacking in merit. Clearly there would be no need for financing if the construction permit were not granted. With respect to the remaining conditions, that EDM ex-

ecute a "standard" financing agreement and "standard" guarantees, it is clear that these are merely perfunctory and thus do not make Motorola's commitment any less firm. Any loan agreement contemplates that certain documents will be executed and that the loan will require certain guarantees on repayment. *See Gary R. Zipper*, DA 87-128, released February 26, 1987.

7. Further, Section 22.917(b)(l)(i) of the Rules requires applicants obtaining financing from an entity other than a recognized lending institution to submit proof that the financing institution has the funds available and uncommitted to another cellular application. Ramsey claims that EDM has not submitted such proof. We disagree. Motorola, as an entity other than a recognized lending institution, has certified in its November 18, 1986 letter that it has funds available and uncommitted to another cellular application. In addition, Motorola's attached balance sheet demonstrates that it has sufficient assets to fund a 4.9 million commitment. Its total net assets as of September 27, 1986 were approximately4.6 billion. This is a sufficient financial showing. *See American Cellular Corp.*, 103 FCC 2d 26, 30-31 (1986).

PRE - FILING SETTLEMENT AGREEMENT

8. Ramsey claims that EDM must be disqualified for its failure to disclose a pre-filing settlement agreement in its initial application. The requirement that an applicant disclose in its application those parties with any ownership interest in the applicant who also hold any ownership interest in another cellular application for the same market was established pursuant to *Memorandum Opinion and Order on Reconsideration*, 58 Rad. Reg. 2d (P&F) 677, 684(1985) and promulgated as Section 22.913(ll) of the Rules. Because is was unclear in Section 22.913(ll) whether this rule required the disclosure of pre-filing settlement agreements consisting of non-cognizable, i.e., less than 1 percent, ownership interests, we released *Public Notice*, Report No. CL-148, on May 12, 1986. In this *Public Notice*, we clarified Section 22.913(ll) indicating that agreements to sell or buy a less than 1 percent interest in an application to another applicant must be disclosed in the application if entered into prior to filing. EDM entered into pre-filing option agreements with other applicants, involving interests of less than one percent . These agreements were signed on May 1, 1986, prior to EDM's filing. However, the *Public Notice* clarifying our policy on the filing of these agreements had not yet been released, and therefore EDM filed its application without the benefit of such guidance. Under these circumstances, we find that no Commission policy is served, by prohibiting the settlement agreement from being filed as part of the Section 1.65 amendment, instead of with the application. Therefore, pursuant to Section 22.20 of the Commission's Rules, we waive Section 22.913(ll) of the Rules respecting this issue.

TRANSFER OF CONTROL

9. The Commission set forth in a public notice a list of factual questions which will be examined on a case-by-case basis to determine whether a transfer of control has occurred. The questions posed in this public notice are, whether the licensee will (a) have unfettered use of all facilities and equipment; (b) control daily operations; (c) determine and carry out policy decisions, including preparing and filing applications with the FCC; (d) be in charge of employment, supervision, and dismissal of personnel; (e) be in charge of the payment of financing obligations, including expenses arising out of operations; and (f) receive monies and profits derived from the operation of the facilities. *Guidance Regarding Questions of Real Party In Interest and Transfer of Control for Applications Beyond Top 120*, FCC Public Notice, Report No. CL-87-1, released October 2, 1986.[1]

10. In support of his argument Ramsey alleges that EDM relied on Motorola for construction and operating cost estimates; EDM agreed to pay Motorola's standard price for equipment; Motorola will determine the design and size of the system; Motorola will provide first-year operations and management of the system; and Motorola will provide many of the components of the system. We find these allegations to be without merit. EDM certifies that it used an industry-wide pricing system in arriving at its construction costs. EDM explains that it agreed to pay prices in accordance with Motorola's list in order to take advantage of the decline in the price of cellular equipment. EDM further explains that the term "services" in the commitment letter refers to construction of the system and not to operation or management of the system. Additionally, neither Motorola's requirement that the design and size of the system conform with "reasonable and prudent industry standards," nor Motorola's provision of many of the component parts of the system suggests that there has been a transfer of control. None of Ramsey's allegations sufficiently demonstrates that Motorola has sought unfettered use of all facilities and equipment, Motorola has taken control of daily operations or decision-making, nor are there any other factors present to suggest that EDM has transferred control to Motorola. We have weighed the allegations in light of the above-listed factors and find that there has been no transfer of control.

COMPLIANCE WITH SECTIONS 22.13 (a) (l) and 22. 913 (a) (ll) OF THE COMMISSION'S RULES

11. Ramsey also claims that EDM's application did not properly disclose information required by Sections 22.13(a)(l)(i), 22.13(a)(l)(iii) and 22.913(a)(ll) of the Commission's Rules. In particular, Ramsey argues that EDM's application failed to include a real party in interest statement disclosing the subsidiaries of EDM, a partnership comprised of Early Monroe and William Monroe. Further, Ramsey argues that EDM failed to disclose the principal business of Early Monroe, owner of more than a 5% interest in EDM. Finally, Ramsey argues that EDM failed to disclose the status of EDM Associates as a real party behind the application where Section 3.1 of the settlement agreement suggests that EDM Associates "has filed or has contracted to file an application" and the second paragraph of the settlement agreement indicates that EDM Associates has ownership interests in authorized cellular radio facilities.

12. Section 22.13(a)(l)(i) requires the submission of a list of subsidiaries -- those businesses "five percent or more of whose stock, warrants, options or debt securities are owned by the applicant or an officer, director, stockholder or key management personnel of the applicant." Section 22.13(a)(l)(iii) requires the submission of a list of the "names, addresses, citizenship and principal business of any person holding five percent or more of each class of stock, warrants, options or debt securities together with the amount and percentage held." The Commission has

established that these sections do not require submission of information concerning businesses other than those which have financial interests in Part 22 licensees, permittees, or those applicants in the same geographical area. *Real Party in Interest Disclosure Requirements in the Public Mobile Radio Services (PMRS),* Mimeo 1060, released November 26, 1982. EDM certifies that neither it, nor its principals, are engaged in any business, other than EDM, that is subject to Part 22 in the same geographic area.

13. Section 22.913(a)(11) requires applicants to disclose those parties with any ownership interest in the applicant who also hold any ownership interest in another cellular application for the same market. EDM Associates, which has an ownership interest in the applicant, does not hold any ownership interest in another cellular application for the same market. Therefore, we find that EDM did not violate Section 22.913(a)(11) of the Rules.

14. Ramsey and Marsh also argue that EDM's character is further drawn into question by the existence of a lawsuit brought in federal court by Satellite Systems Engineering (SSE) against Early D. Monroe, Jr., EDM Cellular's managing partner and 99.1% owner. The complaint alleges that Early D. Monroe marketed SSE application materials, without SSE's authority, to Thomas E. Looney of Crossville, Tennessee, who in turn allegedly remarketed its materials to prospective cellular applicants in a massive lottery fraud scheme. Marsh submits a copy of the order granting a Motion for Judgment by Default in the lawsuit. Ramsey and Marsh request that this issue be fully investigated and resolved prior to taking any action on the above-referenced application. In its reply letter, EDM submits a copy of a filing made in that lawsuit, which includes a "Praecipe of Dismissal" filed by the plaintiff requesting that the suit be dismissed, and a "Consent Motion to Vacate Default Judgment" filed by the parties to the suit as a result of a settlement of the issues in dispute. Thus, EDM argues that in view of the dismissal of the suit, the arguments based on the default judgment submitted by Ramsey and Marsh are no longer before the Commission. Initially, we note that the Commission may fully investigate the matter despite its having been dismissed in federal court, particularly in light of the fact that the case was not decided on the merits therefore leaving the character issues outstanding. However, we have reviewed all the evidence in the record and find that it is insufficient to raise a substantial question involving EDM's character and thus a hearing will not be designated.

15. After careful review of the application and associated pleadings, we find EDM Cellular legally, technically, and otherwise qualified to become a Commission licensee. Accordingly, we can find no justification for granting petitioner's request for a designated hearing.

ORDERING PARAGRAPHS

16. Therefore, for the foregoing reasons, IT IS ORDERED, That the application of EDM Cellular, File No. 65100-CL-P-200-A-86, IS GRANTED. Construction is not authorized at any location for which a final Federal Aviation Administration determination has not been submitted to the FCC and any required marking and lighting specifications have not been issued by the FCC. The authorization does not include the right to any interference protection in any areas outside the Parkersburg-Marietta MSA and is further conditioned upon EDM Cellular's coordinating with current and future licensees in adjacent markets and upon providing interference-free operations to licensees in those areas.

17. IT IS FURTHER ORDERED, That the Petition to Dismiss or Deny IS DENIED.

18. IT IS FURTHER ORDERED, That all other non-wireline applications in this market ARE HEREBY DISMISSED.

19. This order is issued under Section 0.291 of the Commission's rules and is effective on its release date. Petitions for reconsideration under Section 1.115 of the rules may be filed within 30 days of the date of public notice of this order. *See* Section 1.4(b)(2).

FEDERAL COMMUNICATIONS COMMISSION

Kevin J. Kelley
Chief, Mobile Services Division
Common Carrier Bureau

FOOTNOTE

[1] The Commission further stated that where the answers to these questions indicate that the tentative selectee has given up control of the facilities, we will permit all tentative selectees in Markets 121 and beyond to file amendments to assure that the arrangement they propose complies with the Commission's Rules. *Id.*

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

ALLNET COMMUNICATIONS SERVICES, INC. File No. I-T-C-88-013

Application for authority to acquire and operate facilities for service to Hong Kong

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: January 12, 1988; Released: January 25, 1988

By the Acting Chief, International Facilities Division:

1. The instant uncontested application, filed on October 28, 1987 by Allnet Communications Services, Inc. (Allnet), requests authority to lease and operate satellite and connecting facilities for direct service to Hong Kong. Upon consideration of the application, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the provision of direct service to Hong Kong by Allnet.

2. Accordingly, IT IS ORDERED that application File No. I-T-C-88-013 IS GRANTED, and Allnet is authorized to:

a. lease from Comsat and operate 24 voice-grade satellite circuits between an appropriate earth station on the west coast of the United States mainland and an appropriate satellite over the Pacific Ocean, connecting with similar circuits between the satellite and an earth station in Hong Kong, furnished by Allnet's correspondent in Hong Kong;

b. lease and operate 24 voice-grade circuits between the west coast earth station and Allnet's Salinas, California operating office;

c. acquire and operate necessary terminal equipment including multiplex; and

d. use said facilities to provide Allnet's regularly authorized services between the U.S. and Hong Kong and beyond.

3. The Commission retains jurisdiction over this matter to reallocate circuits in the satellite system among the various international common carriers and other authorized users as required to insure nondiscriminatory use of, and equitable access to, the communications satellite system.

4. No material changes inconsistent with this or any other relevant Commission order shall be made before final execution of an operating agreement between Allnet and its correspondent in Hong Kong, and a copy of the agreement shall be filed with the Commission within 30 days of its execution.

5. This authorization is effective on its release date and shall be continued year-to-year, unless the Commission notifies the applicant to the contrary and requires a new application to be filed. If the Commission requires a new application to be filed, the authorization will continue in effect until Commission action on the application.

6. This order is issued under Section 0.291 of the Commission's rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the rules may be filed within 30 days of the date of public notice of this order (see Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Acting Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

MCI TELECOMMUNICATIONS CORPORATION — File No. I-T-C-88-022

Application for authority to acquire and operate facilities for service to Costa Rica

Application for authority to acquire and operate facilities for service to Norway — File No. I-T-C-88-029

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: January 12, 1988; Released: January 25, 1988

By the Acting Chief, International Facilities Division:

1. The captioned uncontested applications, filed on November 12, and 19, 1987, respectively, by MCI Telecommunications Corporation (MCI), request authority to lease and operate satellite and connecting facilities for direct service to Costa Rica and Norway, respectively. Upon consideration of the applications, IT IS HEREBY CERTIFIED, that the present and future public convenience and necessity require the provision of direct service to Costa Rica and Norway by MCI.

2. Accordingly, IT IS ORDERED that applications File Nos. I-T-C-88-022 and I-T-C-88-029 ARE GRANTED, and MCI IS AUTHORIZED to:

a. lease from Comsat and operate 36 voice-grade satellite circuits between an appropriate earth station on the east coast of North America and an appropriate satellite over the Atlantic Ocean, connecting with similar circuits between the United States, on the one hand, and Costa Rica (12 circuits) and Norway (24 circuits), on the other hand, furnished by MCI's correspondents;

b. lease from Comsat International and operate 36 voice-grade circuits in an appropriate east coast earth station;

c. lease and operate 36 voice-grade circuits between an appropriate east coast earth station and MCI's West Orange, New Jersey operating office; and

d. use said facilities to provide MCI's regularly authorized services between the U.S., on the one hand, and Costa Rica and Norway, on the other hand, and beyond.

3. The Commission retains jurisdiction over this matter to reallocate circuits in the satellite system among the various international common carriers and other authorized users as required to insure nondiscriminatory use of, and equitable access to, the communications satellite system.

4. No material changes inconsistent with this or any other relevant Commission order shall be made before final execution of operating agreements between MCI and its correspondents in Costa Rica and Norway, and copies of the agreements shall be filed with the Commission within 30 days of their execution.

5. This authorization is effective on its release date and shall be continued year-to-year, unless the Commission notifies the applicant to the contrary and requires a new application to be filed. If the Commission requires a new application to be filed, the authorization will continue in effect until Commission action on the application.

6. This order is issued under Section 0.291 of the Commission's rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the rules may be filed within 30 days of the date of public notice of this order (see Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Acting Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-168

In re Application of

KIRKWOOD BROADCASTING, INC. File No. BPCT-870121KI

For Construction Permit for a New TV Station Sioux Falls South Dakota

NOTICE

Released: January 25, 1988

Administrative Law Judge Walter C. Miller's Summary Decision in this proceeding (FCC 87D-31) was released September 18, 1987. No exceptions have been filed, and the Commission has not ordered a review of the Summary Decision on its own motion. Fifty days have passed since public release of the Summary Decision. Pursuant to Section 1.276 of the Commission's Rules, the Summary Decision became effective on November 9, 1987 without action by the Commission.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster, III
Acting Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-144

In re Applications of

OCEAN CORPORATION	File No. BPCT-861020KI
DHA BROADCASTING, INC.	File No. BPCT-8612169K
COSTAL COM. INC.	File No. BPCT-8612161L

For Construction Permit for a New TV Station Brunswick, Georgia

NOTICE

Released: January 25, 1988

Administrative Law Judge Richard L. Sipple's Summary Decision in this proceeding (FCC 87D-38) was released November 5, 1987. No exceptions have been filed, and the Commission has not ordered a review of the Summary Decision on its own motion. Fifty days have passed since public release of the Summary Decision. Pursuant to Section 1.276 of the Commission's Rules, the Summary Decision became effective on December 28, 1987 without action by the Commission.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster, III
Acting Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-137

In re Application of

LEIGH SANDOZ LEVERRIER — File No. BPH-860123MX

For Construction Permit for New FM Station, Crisfield, Maryland

NOTICE

Released: January 25, 1988

Administrative Law Judge John M. Frysiak,' Summary Decision in this proceeding (FCC 87D-36) was released October 15, 1987. No exceptions to the have been filed, and the Commission has not ordered a review of the Summary Decision on its own motion. Fifty days have passed since public release of the Summary Decision. Pursuant to Section 1.276 of the Commission's Rules, the Summary Decision became effective December 4, 1987, without action by the Commission.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster, III
Acting Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

National Telecommunications and
Information Administration
Petition for Declaratory Ruling
on Information Services

ORDER

Adopted: December 16, 1987; Released: December 17, 1987

By the Chief, Common Carrier Bureau:

1. The Enhanced Service Providers Association (ESPA) and Pacific Telesis Group (Pacific) have filed motions requesting an extension of the pleading cycle established in the above captioned proceeding. On November 24, 1987, the National Telecommunications and Information Administration (NTIA) filed a petition for a declaratory ruling that the provision of information services by the Bell Operating Companies is in the public interest. On December 1, 1987, the Commission released a public notice requesting comments on the petition by December 30, 1987, and reply comments by January 19, 1988.[1] ESPA, by a motion for extension of time filed December 9, 1987, requests that the time for filing comments be extended to January 29, 1988, and for reply comments to February 19, 1988. Pacific, by a motion for extension of time filed December 14, 1987, requests that the time for filing comments be extended to January 22, 1988, and for reply comments to February 11, 1988.

2. ESPA and Pacific assert that the NTIA Petition raises complex issues of law and policy, and that it would be difficult to complete the research and analysis required to address those issues within the specified time period. In addition, ESPA says that the coincidence of the time for filing comments on the NTIA petition with the *Computer III* ONA process and the holiday season will make it difficult for ESPA to devote the necessary resources to the NTIA petition, while Pacific contends that the extension it requests would allow interested parties adequate time to prepare the pleadings, given the holiday season, without substantially affecting the time- frame for our resolution of this proceeding.

3. While it is the policy of the Commission that extensions of time shall not be routinely granted,[2] we believe that an extension of time will serve the public interest by permitting the preparation of a fully developed record in this proceeding. However, in light of the public interest in early resolution of the issues raised in the NTIA petition, we find that the extensions of time requested by ESPA and Pacific are not warranted. We will therefore extend the time for filing comments to January 14, 1988, and the time for filing reply comments to February 3, 1988.

4. Accordingly, IT IS HEREBY ORDERED, pursuant to Sections 4(j) and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(j) and 155(c), and authority delegated thereunder pursuant to Sections 0.91 and 0.291 of the Commission's Rules, 47 C.F.R. §§ 0.91 and 0.291, that the motions of ESPA and Pacific described in paragraph 1 above ARE GRANTED TO THE EXTENT DESCRIBED HEREIN AND ARE OTHERWISE DENIED. Comments in this proceeding are due on or before **January 14, 1988,** and reply comments are due on or before **February 3, 1988.**

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] FCC Public Notice, DA 87-1726 (Comment Cycle Established Regarding NTIA Petition for Declaratory Ruling that the Provision of Information Services by the BOCs is in the Public Interest), released December 1, 1987.

[2] Section 1.46(a) of the Commission's Rules, 47 C.F.R. § 1.46(a).

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 87-611

In the Matter of

AT&T Communications
Transmittal Nos. 1063 and 1064

Revisions to Tariff
F.C.C. Nos. 1, 2, 11, 13 and 14

MEMORANDUM OPINION AND ORDER

Adopted: January 11, 1988; Released: January 13, 1988

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. In *AT&T Communications*, DA 87-1912, released Dec. 30, 1987 (*December 30 Order*), we instituted an investigation of the captioned tariff revisions of AT&T Communications (AT&T). We noted in that Order that the support material filed with AT&T's proposed tariff revisions was "so perfunctory and lacking in explanation and justification for its proposed rate levels and changes in rate relationships that we have found it impossible to assess, from the filing, whether AT&T's rates will be reasonable." *December 30 Order* at para. 20. We concluded that an investigation of AT&T's revised rates was required and that further information is necessary to determine, on the public record, whether AT&T's rates are and will be reasonable, pursuant to Sections 204(a) and 205 of the Communications Act, 47 U.S.C. §§ 204(a), 205. *Id.* at para. 23.

2. The *December 30 Order* directed AT&T to file its direct case in this investigation not later than January 18, 1988. We stated that AT&T was required to provide information equivalent to that provided by the local exchange carriers (LECs) as part of the Tariff Review Plans (TRPs) submitted with their 1988 access tariff filings.[1] In addition, we directed AT&T to submit, as part of the public record, certain information that it had provided to Bureau staff on a proprietary basis. *Id.* at para. 24. By this Order, we specify with greater particularity the information that AT&T must submit with its direct case. AT&T should also, of course, submit any additional data, information and arguments on which it bases the justness and reasonableness of its rates. We also establish a schedule for further pleadings in this docket.

II. DATA REQUIREMENTS

A. *Data Equivalent to LEC TRP Filings*

3. As part of its direct case, AT&T shall submit information equivalent to that provided in the LECs' TRPS on the following forms: COS-1(P)32; COS-1(P)31; COS-1(H); COS-2(P)32; COS-2(P)31; and COS-2(H). Because these forms were designed for local exchange carriers, not long distance companies such as AT&T, AT&T must make certain revisions to these forms to make them meaningful for its operations. It appears that this can best be accomplished, with a minimum burden upon AT&T, by directing that AT&T provide the information included in its annual Fully Distributed Cost (FDC) Report which AT&T would normally file in June of this year.[2] For the historical year 1987 these data must be at the level of detail contained in the June 1987 FDC Report; for the 1988 test year, AT&T need only provide these data in the Summary format contained in its *FDC Report*.[3] Consistent with the format of the LECs' TRPs, and in order to identify the effects of various rule changes, the FDC format must be expanded to provide data at the levels of Total Company, Total Company after Part 64 Adjustments, Other Adjustments, Total Company Subject to Separations, Total Interstate, Public Switched Network, and Private Line. These data should be shown before and after adjustments for any out-of-period effects.

4. We also direct AT&T to submit demand data similar to that provided by the LECs on Form DMD-1, pp. 1.1 and 1.2. AT&T must provide both historical and projected figures for MTS minutes, WATS minutes, 800 Service minutes and other PSN minutes. [4] Minutes should be reported both as conversation minutes and as Carrier Common Line and Traffic Sensitive access minutes attributable to these services. AT&T's historical and projected data for both Carrier Common Line and Traffic Sensitive access minutes of use must be reported in the same format as on the LECs' TRPs on Form DMD-1, pp. 1.1 and 1.2, except that for the historical period data shall be reported on a quarterly basis and for the test year data shall be reported on an annual basis.

5. Finally, AT&T shall provide demand data for the historical period and the test year for Private Line Services. These data should be disaggregated for AT&T's major private line offerings. In addition, AT&T shall provide historical and prospective data for its Special Access usage in the same format used in the LECs' TRPs on Form DMD-4, pp. 1 and 2. Private Line and Special Access demand should be provided on an annual basis for both the prospective and the historical periods.

B. *Data Submitted to Staff on a Proprietary Basis*

6. On December 1, 1987 AT&T submitted certain information to Bureau staff in response to an informal request concerning the basis of its filing. AT&T submitted data and the major assumptions underlying its Tariff Filing Reference View (TFRV) of 1987 and 1988 on a proprietary basis. We have concluded that, in order to permit us adequately to review AT&T's revised rates, this information must be placed on the public record. AT&T is therefore directed to submit this information as part of its direct case in this docket.[5]

III. FILING SCHEDULE

7. Consistent with our stated intention to complete this investigation as expeditiously as possible, we have directed AT&T to submit its direct case in this investigation not later than January 28, 1988. As we indicated in the *December 30 Order*, we are establishing a schedule for the submission of further pleadings in this docket. Interested parties may file oppositions to or comments on AT&T's

direct case not later than February 12, 1988 and AT&T and other interested parties may file a reply to any such pleadings not later than February 26, 1988.

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED that AT&T Communications SHALL FILE the information specified herein as part of its direct case in the captioned docket not later than **January 28, 1988.**

9. IT IS FURTHER ORDERED that oppositions to or comments on AT&T's direct case SHALL BE FILED not later than **February 12, 1988** and replies SHALL BE FILED not later than February 26, 1988.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] One of the requirements imposed upon the LECs was that they submit, as required by Section 61.38(b)(1) of the Commission's Rules, 47 C.F.R. § 61.38(b)(1), a past year cost of service (PYCOS) study. The *December 30 Order* directed AT&T to use calendar year 1987 for the historical year for its PYCOS study and to use calendar year 1988 as its test year. *December 30 Order* at para. 24.

[2] *See* Tariff Filing Reference Package, Vol. 2, filed June 30, 1987 (*FDC Report*).

[3] We recognize that AT&T will not have full actual data for 1987. AT&T should therefore provide historical data for as many months as possible, separate estimates for the remaining month or months, and total projected results for 1987. We anticipate that AT&T will be able to provide actual data at least through October 1987.

[4] Historical and projected figures should be provided for the following services: Domestic MTS, International MTS, Reach Out America, PRO America (I, II and III separately), WATS, 800 Service, Megacom, Megacom 800, ReadyLine 800, 800 Validator, and Software Defined Network (Schedules A, B and C separately).

[5] The *December 30 Order* also directed AT&T to provide specific information and calculations underlying its revised gross receipts tax factor for Connecticut as part of its direct case. *See December* 30 Order at n.17. We do not believe that further elaboration of this requirement is necessary at this time.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

DANIELS & ASSOCIATES, INC. File No. 24273-CD-PML-01-87

For an additional control facility at Station KRS691 on frequency 75.58 MHz in the Public Land Mobile Service at Lewis Peak near Coalville, Utah

MEMORANDUM OPINION AND ORDER

Adopted: December 18, 1987; Released: January 26, 1988

By the Chief, Mobile Services Division:

1. David R. Williams dba Industrial Communications (hereinafter Industrial) has filed a Petition to Dismiss as Defective against the captioned application of Daniels & Associates, Inc. (hereinafter Daniels.) Daniels had originally proposed to build a control facility on frequency 454.475 MHz. Industrial argues that Daniel's proposed control facilities would cause interference to Industrial's pending application for base facilities at nearby Fairfield.

2. Daniels filed an amendment to its captioned control application on August 12, 1987, changing the requested frequency to 75.58 MHz. Industrial has not opposed the amendment. We find that grant of Daniels' control facility application, as amended, meets the requirements of Section 22.501(f) of the Commission's Rules and that grant of the application will serve the public interest, convenience, and necessity.

3. Wherefore, for the foregoing reasons, IT IS HEREBY ORDERED that insofar as it opposes grant of the captioned application, the Petition to Dismiss as Defective filed by Industrial IS DENIED as moot.

4. IT IS FURTHER ORDERED that the application of Daniels & Associates, Inc. File No. 24273-CD-PML-01-87 IS HEREBY GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Kevin J. Kelley
Chief, Mobile Services Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of

LEHIGH VALLEY
MOBILE TELEPHONE
COMPANY

Station KNKG388 File No. 23128-CD-PL-83
Baltimore, Maryland

Station KNKG387 File No. 23129-CD-PL-83
Fairfax Station, Virginia

Station KNKG390 File No. 23130-CD-PL-83
Ventnor City, New Jersey

For an extension of time to
construct new 900 MHz paging
facilities.

ORDER ON RECONSIDERATION

Adopted December 23, 1987; Released: January 26, 1988

By the Chief, Mobile Services Division:

1. Lehigh Valley Mobile Telephone Company (LVMT) filed a petition for reconsideration of the Mobile Service Division's (MSD) action denying its request for additional time to construct new 900 MHz paging facilities in Baltimore, Maryland, Fairfax Station, Virginia and Ventnor City, New Jersey.[1] For the reasons given below, we will grant the petition.

2. By way of background, on November 14, 1986, LVMT filed a request for a one year extension of time to construct the above-referenced facilities. LVMT stated that it had delayed construction due to uncertainty as to whether state certification was required. As LVMT noted, the Commission issued a *Report and Order* in CC Docket 85-99 which established a policy of preempting state regulation that has the effect of prohibiting or impeding the entry of common carriers in the Public Land Mobile Service. *Preemption of State Entry Regulation in the Public Land Mobile Service*, 51 Fed. Reg. 15498 (April 24, 1986). (Order) However, on June 30, 1986, just one day before the Order was to become effective, the U.S. District Court for the D.C. Circuit stayed the Order.[2] LVMT filed for state certification in Maryland on August 11, 1986. When the certificate was not forthcoming, LVMT requested an extension of time from the FCC on November 14, 1986 to construct facilities.

3. The MSD denied LVMT's request on the basis that LVMT had not demonstrated due diligence in pursuing all necessary state certificates in accordance with Section 22.43(b)(2) of the rules. In its petition for reconsideration, LVMT informed us that on December 8, 1986 the State of Maryland granted it a certificate to operate conditioned on LVMT obtaining an extension of time to construct from this Commission. Ten days later, not being aware of the state's action, the MSD denied LVMT's request for an extension of time.

4. In view of the fact that the State of Maryland granted the certificate before we denied the extension of time and that the only condition placed on the certificate was the grant of the extension of time from this Commission, we will grant reconsideration. Under these circumstances, it would serve the public interest to grant the extension thereby expediting service to the area.

5. Accordingly, IT IS ORDERED, That the Petition for Reconsideration filed by the Lehigh Valley Mobile Telephone Company IS GRANTED with regard to the Baltimore, Maryland station.

6. IT IS FURTHER ORDERED, That an extension of time of ninety days from the date this order is released to construct Station KNKG388, at Baltimore, Maryland, File No. 23128-CD-PL-83 IS GRANTED.

7. This order is issued under Section 0.291 of the Commission's Rules and is effective on its release date. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Rules may be filed within 30 days of the release date of this order. *See* Section 1.4(b)(2).

FEDERAL COMMUNICATIONS COMMISSION

Kevin J. Kelley
Chief, Mobile Services Division
Common Carrier Bureau

FOOTNOTES

[1] On July 17, 1987, LVMT filed a letter dismissing its request for reconsideration with regard to the Fairfax Station and Ventnor City stations.

[2] The Commission's request for remand was denied and, finally, in conjunction with other related matters, the Order was vacated. *National Association of* Regulatory Utility Commissioners v. FCC No. 86-1205 (D.C., Cir. Mar. 30, 1986).

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of

RONALD F. TRINCHITELLA — File No. 85554-CL-299-A-86

For authority to construct and operate a Domestic Public Cellular Radio Telecommunications Service on Frequency Block A in the Casper, Wyoming Metropolitan Statistical Area (MSA)

ORDER ON RECONSIDERATION

Adopted: December 23, 1987; Released: January 26, 1988

By the Chief, Common Carrier Bureau:

1. Before the Bureau is a petition for reconsideration filed by Ronald F. Trinchitella (Trinchitella).[1] Trinchitella's application was selected first in the lottery for the non-wireline cellular construction permit for the Casper, Wyoming MSA. By a letter dated March 3, 1987, the Mobile Services Division (MSD) dismissed the application. The MSD stated that the application violated Section 1.743 of the Commission's rules because it had been signed by a person with a power of attorney, rather than by the applicant.[2] Trinchitella asks the Bureau to reinstate his application.

2. Trinchitella argues, first, that a signature executed pursuant to a valid power of attorney meets the requirements of Section 1.743(a). [3] Next, Trinchitella asserts that the signature requirement is ambiguous and impermissibly vague. Third, Trinchitella argues that any defect in the signature was corrected by later filings. Trinchitella asserts that he ratified and affirmed the application by filing an amendment under his own signature on January 5, 1987. Trinchitella also submitted personally signed copies of the Form 401 and certification page as part of his petition for reconsideration. Finally, Trinchitella argues that he was physically disabled at the time the application was filed and that equitable considerations therefore require his reinstatement.[4]

3. To support his claim of physical disability, Trinchitella submitted his own declaration, a letter from his employer and a declaration from Dr. Ernest N. Kaplan. Trinchitella's declaration states, in pertinent part, as follows:

> As the May 19-May 23, 1986 filing window approached, I was recovering from cranial reconstructive surgery, and was on leave due to physical disability. Due to my condition and my scheudle [sic] during the interval between the date of my decision (May 12) to apply and the application filing window, I accepted the SEE [sic] suggestion that I execute a written power of attorney. . . I executed and returned this document to SEE [sic] immediately.

The employer states that "[d]uring the time of the surgery and for approximately one month thereafter", Trinchitella was "unable to perform the full scope of his duties" as manager and took an early thirty-day vacation. Trinchitella's duties were described as "stressful" and were said to include irregular hours, payroll preparation and monitoring employees. The vacation was apparently taken in May of 1986. Dr. Kaplan states that he performed surgery on Trinchitella in August and November of 1985. Dr. Kaplan states that he prescribed Vicodin for "headaches and any other discomfort" associated with recovery, that this drug "has been known" to cause drowsiness and clouding of cognitive ability, and that he does not know the period of time over which Trinchitella used the drug. Dr. Kaplan indicates that he spoke with Trinchitella by telephone several times between November 1985 and October 1986.

DISCUSSION

4. Section 1.743(a) of the rules provides that applications "shall be personally signed by the applicant, if the applicant is an individual". Applications signed by soClyde *W. Pierce*, 2 FCC Rcd 3522 (1987); *Bruce M. Schorsten*, 2 FCC Rcd 5421 (1987). Since Trinchitella's application was signed, not by him, but by someone acting pursuant to a power of attorney, Trinchitella did not meet the requirement of Section 1.743(a). Furthermore, since the rule expressly states that the application must be *personally* signed by the applicant, we find that the signature requirement is neither ambiguous nor vague.

5. We also reject Trinchitella's argument that the defective signature could be corrected by later filings. The failure to properly execute the Form 401 and certification renders an application unacceptable for filing. *Pierce*, 2 FCC Rcd at 3522; *Douglas R. Casey*, 2 FCC Rcd 6414 (1987). *See also Johnstown Cellular Communications Co.*, 1 FCC Rcd 1164, 1165 (1986) (certification to be reviewed under the "letter perfect" standard). As such, the application cannot be corrected by amendment.[5] *See e. g. Casey*, 2 FCC Rcd at 6415.

6. The only exception to the requirement of Section 1.743(a) is set forth in Section 1.743(b) of the rules, which provides, in part, as follows:

> Applications. . . may be signed by the applicant's attorney in case of the applicant's physical disability, or in case the applicant does not reside in any of the contiguous 48 States of the United States or in the District of Columbia. The attorney shall in that event separately set forth the reason why the application is not signed by the applicant.

Trinchitella does not meet the requirements of Section 1.743(b). First, Trinchitella does not indicate that the person signing his application was an attorney.[6] *See Casey*, 2 FCC Rcd at 6415. Second, the person signing the application failed to set forth the reason why the application was not personally signed by Trinchitella. *See Casey*, 2 FCC Rcd at 6415. Trinchitella's physical condition was first mentioned in the petition for reconsideration, which was

submitted on April 13, 1987, nearly a year after the application was filed. Finally, Trinchitella has not established his disability. Trinchitella's last operation occurred in November 1985. The application was signed almost six months later, on May 18, 1986, and filed on May 23, 1986. There is no medical evidence to show that Trinchitella was physically disabled in May of 1986. An employer's statement that Trinchitella was unable to perform the full scope of his duties in a stressful management job, does not establish that Trinchitella was unable to review and sign a cellular application. Furthermore, Trinchitella's own declaration shows that between May 12 and May 23, 1986 he was able to make decisions regarding his application and to sign and return a power of attorney document. The evidence presented fails to establish that Trinchitella was physically unable to review and sign his application.

ORDERING PARAGRAPHS

7. For the foregoing reasons, IT IS ORDERED, that the Petition for Reconsideration filed by Ronald F. Trinchitella IS DENIED.

8. This order is issued under Section 0.291 of the Commission's rules and is effective on its release date. Applications for review under Section 1.115 of the rules may be filed within 30 days of the date of public notice of this order. *See* Section 1.4(b)(2) of the rules.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] On October 9, 1987, an informal objection to the petition was filed by United States Cellular Corporation (USCC), the second ranked applicant in the lottery. Trinchitella filed a reply, which included a motion to strike the informal objection, and a declaration from Dr. Ernest N. Kaplan. USCC filed a motion to strike the reply and Trinchitella filed a response. We have accepted Dr. Kaplan's declaration, which provides additional relevant evidence. We have not otherwise relied on the above pleadings.

[2] Trinchitella's Form 401 and certification were signed by Mr. Napp, an employee of Satellite Systems Engineering, Inc. (SSE), the consulting firm which prepared the application.

[3] Trinchitella also argues that the restrictions in Section 1.743(b) of the rules, concerning when applications may be signed by an "attorney", apply only to applications signed by an attorney in fact and not to applications signed by someone acting under a power of attorney.

[4] Trinchitella also argues that he reasonably relied on SSE's advice that someone acting pursuant to a power of attorney could sign the application. However, Trinchitella is ultimately responsible for his application and for ensuring that the application conforms to Commission rules. *See Bruce M. Schorsten*, 2 FCC Rcd 5421, 5422, n.3 (1987).

[5] The present case is distinguishable from *American Cellular Network Corporation of Nevada*, 2 FCC Rcd 4530 (1987) and *Florida Cellcom*, DA 87-1660, released November 24, 1987. In *American Cellular* the Commission stated that a new amendment could be submitted to replace an amendment which was improperly signed. In Florida Cellcom, we waived Section 1.743 and accepted an improperly signed financial amendment, rather than requiring that a new amendment be submitted. In both cases, however, we noted that while an incorrectly signed amendment could be cured by a subsequent amendment, an improperly signed initial application and certification could not be so corrected. See also Pierce, 2 FCC Rcd at 3522.

[6] We agree with Trinchitella that the word "attorney" in Section 1.743(b) referes to attorneys at law and not to a person acting under a power of attorney. See note 3, supra.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-257

In the Matter of

Amendment of Section 73.202(b),	RM-5853
Table of Allotments,	
FM Broadcast Stations.	
(Wendover, Nevada)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: December 24, 1987; Released: January 26, 1988

By the Chief, Allocations Branch:

1. At the request of Rita Taylor (petitioner), the Commission has before it the *Notice of Proposed Rule Making*, 2 FCC Rcd 4342 (1987), proposing the allocation of Class C Channel 272 to Wendover, Nevada, as the community's first local FM service. Comments supporting the allotment were filed by the petitioner and by Congresswoman Barbara F. Vucanovich (Vucanovich). No other comments were received.

2. The *Notice* raised the issue of whether Wendover is a community for allotment purposes since it is not listed in the 1980 U.S. Census. In response, petitioner states that Wendover "actually comprises two communities which straddle the NevadaUtah border." She says that Wendover, Nevada, is an unincorporated town in Elko County contiguous to the incorporated city of Wendover, Utah.[1] She submits that the two communities share some services and facilities but that each has its own governmental structure. Petitioner points out that Wendover is governed by the Elko County Commissioners because the community is unincorporated but that the County Commission appoints a five-person advisory council comprised of Wendover residents. According to the petitioner, Wendover receives police service from the Elko County Sheriff's Department, which has three deputy sheriff's assigned to the community on a fulltime basis. Fire protection is provided by a volunteer fire department staffed by residents of both Wendover, Nevada, and Wendover, Utah, with stations in each jurisdiction. She goes on to state that Wendover, Nevada, has an elementary school, administered by Elko County, with students from both States and that high school students from both States attend school in Utah. Appended to her comments is a list of numerous local businesses and services such as Wendover Auto Parts, Wendover Service and Supply, Desert Sports, Silver Smith Casino and Resort, Wendover Ambulance, West Wendover Library. We are also told that Wendover, Nevada, has its own medical clinic, bank and churches. Petitioner claims that in recent years, Wendover, Nevada, has experienced a regrowth in permanent residents and tourists. According to the Wendover USA newsletter, *Tee Times*, Wendover has grown from approximately 1,000 residents in 1983 to 5,500 today, with a projected 1990 population of 10,000. It also states that Wendover receives over one million visitors a year due to the promotion of gaming and entertainment by the local casinos. Petitioner has also furnished letters from the Wendover Justice of the Peace, Chairman of the West Wendover Council and Chairman of the "Wendover U.S.A. Visitor Bureau." She concludes that Wendover, Nevada, is a distinct community for allotment purposes and thus urges the allocation of Channel 272C as its first local FM service.

3. Based on the above information, we believe that petitioner has provided us with sufficient data to conclude that Wendover is a community for allotment purposes. It is an identifiable population grouping with business and community organizations which identify themselves with the residents of Wendover, Nevada.

4. We believe that the public interest would be served by allocating Channel 272C to Wendover, Nevada, as the community's first local FM service, since an interest in its use has been expressed. Channel 272 can be allocated to Wendover in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction.[2] Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **March 14, 1988,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Wendover, Nevada	272C

5. The window period for filing applications will open on **March 15, 1988,** and close on **April 14, 1988.**

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Mark N. Lipp
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] Petitioner states that Wendover, Nevada, is sometimes referred to locally as West Wendover but that the legal name of the community is Wendover. Congresswoman Vucanovich states that West Wendover is a separate community from Wendover, Utah.

[2] The coordinates for Wendover are: North Latitude 40o 44' 18"; West Longitude 114o 02' 24".

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of the Applications of

RCA	File Nos. 1970-DSS-MPML-86
AMERICAN	1971-DSS-MPML-86
COMMUNICATIONS,	1972-DSS-MP-86
INC.	

For Modification of Space Station Authorizations in the Domestic Fixed-Satellite Service

TENTATIVE DECISION

Adopted: January 4, 1988; Released: January 26, 1988

By the Commission:

INTRODUCTION AND SUMMARY

1. Before the Commission for its consideration are the above-captioned applications filed by RCA American Communications, Inc. (RCA),[1] requesting modification of its K-3 and K-4 satellites. On April 27, 1983, the Commission authorized RCA to construct four and operate three satellites that were to operate in the 1214 GHz frequency band (Ku-band) and were to be equipped with 20 watt travelling wave tube amplifiers (TWTAs).[2] The three operational satellites were assigned to the 67', 81' and 85' West Longitude (W.L.) orbital locations.[3] On January 28, 1985, the Commission permitted RCA to construct satellites equipped with 45 watt instead of 20 watt TWTAs. [4] RCA is now requesting authority to modify its satellite construction permits further to redesign its K-3 satellite and its K-4 ground spare satellite with 60 watt TWTAs. RCA requests authority to operate its K-3 satellite from 85' W.L. with transponders capable of operating either with 27 MHz or 54 MHz of usable bandwidth using two half-CONUS coverage beams.[5] All of K-3's capacity is to be used exclusively for the distribution of video program services.[6] Based on its interference analysis, RCA asserts that with cooperative coordination measures, its K-3 satellite could co-exist with adjacent satellites. RCA also requests authority to sell all the transponders on K-3 on a non-common carrier basis. Finally, RCA requests an extension of the construction completion date for the K-3 satellite from February 27, 1987 to April 2, 1989 and an extension of the launch date to the earliest available date thereafter.[7]

2. American Satellite Company (ASC) and GTE Spacenet Corporation (GTE), which are both planning to operate hybrid satellites (i.e., satellites having transponders that operate both in the 46 GHz and 1214 GHz frequency bands) adjacent to K-3,[8] have filed petitions to deny the RCA modification request, citing flaws in the RCA interference analysis and claiming that RCA's higher powered, spot beam configured satellite would cause harmful interference into their satellites. RCA opposed both the ASC and GTE petitions, stating that it was prepared to undertake the bulk of the necessary coordination effort leaving ASC and GTE with relatively minor coordination measures.[9] In its reply, as a possible solution to the potential interference problem, GTE proposed an alternative to the orbital assignment plan established in the *1985 Orbit Assignment Order*.[10] GTE proposed, *inter alia*, that RCA's K-3 be reassigned to 87' W.L. and its Spacenet III be reassigned from 87' to 101' W.L. This suggestion prompted Public Broadcasting Service (PBS), owner of four transponders on Westar IV located at 99' W.L., and the National Association of Public Television Stations (NAPTS) to file a petition to deny the GTE "proposal" some five months later.[11]

3. In a final attempt to marshal industry consensus regarding the disposition of its K-3 modification request, RCA and HBO invited representatives of the major satellite operators and their customers to participate in a series of meetings.[12] Several alternative orbit assignment plans were discussed in the meetings and a "consensus" plan was developed and described in the RCAHBO Intercarrier Report. The proposal called for reassigning GTE's Spacenet III from 87' W.L. to 89' W.L., leaving 87' W.L. vacant, assigning RCA's K-3 satellite to 85' W.L., its K-2 satellites to 83' W.L. and ASC's ASC-2 satellite to 81' W.L. This proposal was placed on Public Notice on April 22, 1987.[13] It was opposed by ASC, Western Union Telegraph Company (Western Union), Associated Press (AP), Federal Express Corporation (Federal Express) and USTV Limited Partnership (USTV).

4. Thus, the affected operators have failed to reach an agreement that would permit K-3 to be accommodated. Consequently, we have developed a proposal to accommodate RCA's high power, half-conus beam configured satellite. We do this because the touchstone of the Commission's fixed-satellite policy since its inception has been to provide for all reasonable satellite application requests. We believe our proposed solution best balances the need to protect lower-powered, full-CONUS configured, domestic satellites with our desire to accommodate higher power satellites in half-CONUS and spot beam configurations.

5. In sum, we propose to use a discrete segment of the orbital arc to isolate high-powered satellites that cannot be easily accommodated in other portions of the arc. Within this arc segment, domestic satellite carriers will be permitted to operate their satellites without the need to observe power limitations. In fact, the domestic satellite carriers' operating parameters will be limited only by what can be coordinated among other carriers domestically and what may be required for coordination purposes internationally. The orbital arc from 87' to 93' W.L. is proposed as the initial segment for these high power satellites. We also propose to space satellites with 1.5' separations in this arc portion to maximize the number of satellites that can be accommodated in the 1214 GHz band. Before finally adopting the approach, however, we wish to give all affected parties an opportunity to comment on it.

6. In this *Tentative Decision*, we discuss the basis for arc segmentation and describe its implementation. We are proposing to grant the RCA modification request subject to the technical conditions contained herein. We also intend to grant RCA's other requests (to operate with either 27 MHz or 54 MHz transponders, to sell transponders and to extend its construction schedule) in the event we affirm this *Tentative Decision*.

DISCUSSION

a. Approach

7. In essence, RCA's primary request raises an orbit assignment issue. The *1985 Orbit Assignment Order* enunciates our policy on orbital reassignment and alternate assignment plans. We stated:

> [I]n developing this plan of current orbital assignments, we do not intend to preclude operators from identifying alternatives. . . . We will entertain requests for changes in the assignments made today if they are consistent with the basic structure of the assignment plan, and are agreed to by all, or at least most, of the satellite operators affected by the change. If all operators do not agree, the burden is on the operator proposing the change to demonstrate that its alternative is preferable to the adopted plan. . . . If particular problems cannot be resolved by the parties, they may be brought to the Commission for resolution.[14]

Although RCA states that it can co-exist with the full-CONUS, lower-powered satellites 2° away, the adjacent satellite operators disagree. Several alternative orbital assignment plans were proposed in an effort to accommodate RCA's K-3 satellite. However, there is no general consensus among satellite operators to implement either proposal contained in the RCAHBO Intercarrier Report or any of the alternative orbital assignment plans proposed by the parties.[15]

8. We agree that in order to accommodate RCA's K-3 satellite, an alternative orbit assignment scheme must be implemented. In resolving this problem, we recognize that any solution to the K-3 interference problem should be flexible enough to accommodate other high-powered satellites that cannot easily be coordinated with traditional fixed-satellites. Our task is to balance the needs and desires of all affected parties in a way that maximizes the efficiency of the spectrum and the geostationary arc. Thus, rather than adopting one of the proposed orbital assignment schemes before us, we have developed and are proposing another alternative that will allow us to avoid an *ad hoc* revision of our orbital assignment scheme, and a concomitant disruption in service as in-orbit satellites are required to be moved, each time a high power satellite is introduced.[16] Our proposal is flexible enough to allow the industry to grow and continue to incorporate new technology without unnecessary regulatory constraints, while permitting lower-power satellites authorized in the previous generation to continue to operate without harmful interference. Its implementation should resolve the concerns of all affected parties in this proceeding and accommodate the long-range planning of those satellite operators who wish to operate higher powered, spot-beam configured satellites in the future.

b. The Need for Higher Power Satellites

9. The U.S. domestic satellite industry is not static. Since its beginnings in the 1970's, the industry has developed as technology has progressed. The Commission has encouraged the use of the latest in satellite technology to promote a more competitive marketplace and the provision of diverse, efficient and cost-effective service to the public. Over the years, satellite service providers have filed applications for new satellite systems that have incorporated the latest in available technology to enhance their new satellite's operating characteristics, improving on the previous generation of satellites. We expect this to continue. The introduction of new technology into communication satellite services is more constrained now than it has been in the past, however, as the number of entrants to be accommodated has increased. For example, we have had to adopt a number of parameters to reduce spacing between satellites to 2°; this limits the flexibility available to licensees.[17]

10. One example of new technology emerging in the past several years has been the trend to higher satellite transmitter power, enabling downlink transmissions to be received by earth stations using small antennas.[18] RCA's proposal employs high satellite transmitted power into earth stations using small diameter antennas for television distribution. Another service currently being provided using this technology is single channel per carrier (SCPC) communications.[19] The high satellite transmitted powers are provided by technological advances in power amplifiers which have increased the maximum transmitted power by threefold over the past ten years. In addition, the effective power available to earth stations is further increased by satellites using one-half CONUS coverage antenna beams which have twice the gain of a full CONUS coverage antenna.[20] Applicants point to two advantages of systems using high transmitter power density levels, both into the earth station antenna and from the satellite antenna. The first is that the small earth stations are less expensive. The second is that the use of increased power during periods of heavy rain provides for higher communications link availability.

11. To accommodate even modestly higher powers, constraints have been necessary. For example, in our recent *VSAT Order* authorizing the use of very small aperture terminal (VSAT) antenna networks,[21] the Commission required operators to limit both the earth station and the satellite transmitted power densities so that their VSAT services would not cause harmful interference into existing services. However, several requests have been filed to use transmitter power density levels higher than those recently authorized by the *VSAT Order* and the *Declaratory Order*.[22] The applicants propose to resolve any resulting harmful interference conflicts through frequency coordination but as the RCA experience demonstrates, coordinating new high power uses with existing uses is difficult.[23] Further, applications in the current domestic fixed-satellite processing group contain proposals for high power satellites operating in the 1214 GHz band.[24]

12. Thus, the Commission is in a position where services may not be able to be fully accommodated because operations associated with the power levels requested by the applicants would cause harmful interference into existing and other planned services. The satellites that are now in orbit and those that are currently under construction have operating parameters and technical characteristics that are widely diverse and non-homogeneous. These diverse characteristics include power amplifier outputs which range from 20 to 60 watts; satellites with anywhere from 6 to 24 transponders; satellite transponders with bandwidths of 36, 43, 54 andor 110 MHz; operation with either one or two television signals in a single transponder; operation with either a full CONUS, half CONUS, multiple spot beams and operation of co-located satellites from a single orbit location. Such diverse parameters among satellites increase

the importance of adjacent satellite coordination and highlight the need for some alternative to the standard 2' orbital spacing plan in those cases where severe interference conflicts exist if the diversity of proposals is to be accommodated.

13. Therefore, in order to permit the introduction of high power services which are not easily coordinated with existing operations and to accommodate future services, we are proposing an orbit assignment approach that will permit these new services to be authorized in a timely manner without causing harmful interference to the traditional services. This approach provides that a sector of the orbit will be set aside where future users may operate with high power density levels and operations will be essentially based on the levels of coordination that are negotiated with the adjacent satellite users. Orbital arc segmentation will allow for the immediate operation of these new services in an environment largely removed from current lower power services. Thus, both satellite and satellite communications service designers are provided with greater flexibility than is currently permitted under existing conditions of operation.

c. Implementation

14. We propose that in the 1214 GHz frequency band, the segment of the orbit beginning with 87.0' W.L. and ending with 93.0' W.L. be established to permit high power satellites to transmit maximum power density levels for which they have been coordinated domestically and internationally. Satellite operators authorized to build high power satellites who would prefer to operate in the high power segment may be assigned to a location within this special orbital arc. We propose that satellites assigned to this arc operate with cross-polarization with respect to adjacent satellites within and immediately outside of this arc. We also propose to space 1214 GHz satellites with 1.5' separations in this segment.[25] Satellites assigned to this orbital segment will be assigned the locations at 87.0', 88.5', 90.0', 91.5' and 93.0' W.L.

15. We propose to implement 1.5' spacing in this discrete arc because of the technical and practical advantages 1.5' spacing has over 2' spacing for the types of satellites that will be located in the arc, and because such spacing will provide more locations than would be possible with traditional 2' spacing. Obviously, the spectrum and the orbital arc are more efficiently used by establishing an additional orbit location within the 6.0' orbital segment than would have been available with 2' spacing. With 2' spacings, every 6' segment defines four orbital locations. Using 1.5' spacing, each 6' segment defines five orbital locations. This spacing will permit more satellites to be authorized. As a technical matter, the measured signal discrimination performance of a typical earth station antenna is better at 1.5' off boresight axis than at 2' off-axis.[26] This means that a typical earth station operating in the 1214 GHz band can better distinguish between a desired signal and an interfering signal from a satellite 1.5' away than if the interfering signal is received from a satellite 2' away. Moreover, earth station signal discrimination at 1.5' is greater than the performance standard given in 47 C.F.R. § 25.209, especially when the advantage of adjacent satellite signal discrimination provided by cross-polarization near the main lobe of the earth station antenna is considered.

16. We recognize that operating within this new arc segment will not be without its costs. First, adjacent satellites in this arc will be required to be cross-polarized with respect to each other. The reduction in orbital spacing within the arc segment from 2' to 1.5' will produce an additional 3 dB of interfering power into a typical earth station in those cases where the desired transponder on the desired satellite is co-frequency, co-polarized with an interfering transponder on an interfering adjacent satellite.[27] When cross-polarization is introduced on the adjacent satellite, however, the adjacent interfering satellite's signal is significantly reduced by the antenna's cross-polarization discrimination characteristics. Although adjacent satellite cross-polarization has not been required in the 1214 GHz frequency band, it is used in the 46 GHz band with success. There, orbit and spectrum utilization have been enhanced and coordination among satellites has been aided. A second disadvantage relates to the fact that parabolic antennas 1.2 meters and smaller may experience difficulty in receiving television signals within an arc segment with 1.5' spacings. However, earth stations with 1.2 meter antennas are not now used to receive television and satellite carriers who wish to provide television programming may decide to use 1.8 meter antennas as their system's smallest antenna. On balance, we believe the advantages to be realized by retaining our flexibility to accommodate high power density satellites by requiring adjacent satellite cross-polarization and 1.5' spacings in this limited arc segment far outweighs the attendant costs.

17. The operational modifications described above will permit satellites to transmit at their maximum power density levels.[28] They will permit satellite earth stations located in the southeastern United States to operate with high earth station elevation angles and permit satellites to operate with high power spot beams. This particular segment also permits satellites to provide service to Hawaii and the southern portion of Alaska. Two locations, 87.0' W.L. and 93.0' W.L., are locations where high powered hybrid satellites can be located.[29]

18. By segmenting the arc in this fashion, we will be able to grant RCA's requested technical modifications.[30] In order to resolve the current interference conflict, we will relocate the RCA K-3 satellite to 91.5' W.L. from 85' W.L. GTE Spacenet's SPACENET III will remain at 87' W.L., and we will relocate SBS-4 to 85' W.L. from 91' W.L. and RCA's K-1 satellite to its assigned 67' W.L. from the 85' W.L. location where it is currently operating.[31] This will minimize the number of in-orbit satellites required to be relocated, and will permit additional high power 1214 GHz satellites to be accommodated.[32] Finally, we will entertain comments on the operational and management aspects of this tentative decision to segment the orbital arc. For example, we would be receptive to suggestions on how (or whether) satellites carrying different service offerings should be grouped to expedite and simplify overall frequency coordination. One question might be how (or whether) to group all-SCPC, all-TV and SCPCTV mixture satellites.[33] Finally, we welcome comment on whether any additional conditions should be imposed on newly authorized satellites assigned within this special orbital segment, and if so, what those conditions should be.[34]

III. CONCLUSION

19. By this *Tentative Decision*, we have sought to resolve an immediate problem and address other foreseeable problems in one comprehensive proposal. We believe that the proposal we have detailed in this *Tentative Decision* is responsive to the needs of the satellite industry, and will permit the use of new technologies and improved service offerings, while providing existing operators the assurance that they will permitted to operate without undue interference. We believe arc segmentation will facilitate the coexistence of older and newer technologies while ensuring the maximum possible utilization of both. Although we welcome comment on our proposal, we encourage commenters to couch their responses in terms of how best to accommodate all users.

20. Pursuant to the procedures set out in Section 1.415 of the Commission's rules, 47 C.F.R. § 1.415, interested parties may file comments on these proposals on or before March 7, 1988 and reply comments on or before March 28, 1988. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the *Final Decision* to follow.

21. In accordance with the provisions of Section 1.419 of the Commission's rules, 47 C.F.R. § 1.419, formal participants shall file an original and five copies of their comments and other materials. Participants wishing each Commissioner to have a personal copy of their comments should file an original and ten copies. Members of the general public who wish to express their interest by participating informally may do so by submitting one copy. All comments are given the same consideration, regardless of the number of copies submitted. Comments and reply comments should be sent to: Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. All documents will be available for public inspection during regular business hours at the Domestic Facilities Division Public Reference Room, Room 6220, 2025 M Street, N.W., Washington, D.C. For general information on how to file comments, please contact the FCC Consumer Assistance and Information Division at (202) 632-7000.

22. For purposes of this non-restricted notice and comment Rule Making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a tentative decision until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written commentspleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of the presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation on the day of oral presentation. That written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. *See generally* 47 C.F.R. § 1.1231.

IV. Ordering Clause

23. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 4(j), 214(c) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 4(i), 4(j), 214(c), 303(r) and Section 553 of the Administrative Procedures Act, 5 U.S.C. § 553, we hereby give notice that the policies set forth in this document are adopted as a Tentative Decision.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster III
Acting Secretary

FOOTNOTES

[1] These applications were originally filed by RCA American Communications, Inc. (RCA). Subsequently, RCA's name was changed to GE American Communications,Inc. However, for the purposes of clarity and consistency, we will continue to refer to the entity as RCA.

[2] RCA American Communications,Inc., 94 FCC 2d 441 (1983).

[3] 1985 Orbit Assignment Order, 50 Fed. Reg. 35228 (August 30, 1985).

[4] RCA American Communications, Inc., File Nos. 153315341535 1536-DSS-MPL-83 (released January 28, 1985).

[5] CONUS stands for contiguous United States. RCA is currently authorized to operate with transponders of 54 MHz usable bandwidth. Operation with the 27 MHz bandwidth would allow transmission at full power of one video signal on each of the 16 transponders on K-3 and would permit a second co-located satellite to transmit 16 video signals at full power if the need develops. This would allow for the transmission of 32 full-power video signals from one orbital location into one fixed earth station antenna. The transponders would be switchable between 27 MHz and 54 MHz from the ground. Although RCA does not request authority to co-locate K-4 with K-3 at 85' W.L. in this modification request, it does anticipate requesting such authority in the future. Although all authorized U.S. domestic satellites provide full CONUS coverage, different satellite operators achieve that end by different methods and beam configurations. RCA will operate K-3 with two footprints that each cover half of the forty-eight contiguous United States; one the eastern half, the other the western half. This concentration of power tends to increase the potential for interference into earth stations of adjacent satellites.

[6] RCA asserts that use of 60 watt TWTAs will allow reception of television programming using earth stations with antennas as small as 1.0 meter in diameter.

[7] RCA later informed the Commission that it has a launch contract with Arianespace specifying a firm launch date in September-October, 1989.

[8] ASC is authorized to operate its ASC-2 satellite at 83' W.L. GTE Spacenet is authorized to operate its Spacenet III satellite at 87' W.L.

[9] RCA asserted that it would: (1) increase the diameter of the transmit antennas using K-3 from 7.7 meters to 9.0 meters; (2) reduce its uplink transmitted power by 3.3 dB; (3) further reduce uplink power by 3 dB by changing the satellite's flux control attenuator setting from 12 dB to 9 dB; and (4) use transmit antennas with improved sidelobe patterns (27 - 25 log [theta]).

[10] *See* note 3, *supra*.

[11] In their petition, PBS and NAPTS argued that the Commission could not adopt GTE's proposal without first giving public notice and an opportunity to comment to any affected party pursuant to Section 309 of the Communications Act. 47 U.S.C. § 309. PBS claims that it had no notice of the GTE proposal and discovered it by chance in another proceeding. In opposition, GTE, RCA and HBO argue *inter alia* that Section 309 does not apply in this case because the GTE "proposal" is a suggested solution to an interference problem, and not a formal application for orbital reassignment.

[12] For a list of the meetings' participants, *see* Report on Intercarrier Coordination Meetings, Appendices A and B (hereinafter RCAHBO Intercarrier Report).

[13] Public Notice, Report No. DS-618 (April 22, 1987).

[14] 1985 Orbit Assignment Order, note 3, *supra*, at para. 19.

[15] We will consider the PBSNAPTS "petition to deny" as informal comments because doing so will not delay the resolution of this proceeding. *C. f.* 47 C.F.R. § 21.30(b), (c).

[16] Thus, to the extent that the pleadings discuss the details of RCA's interference analysis and the merits of the various alternative orbital assignments proposed in the course of this proceeding, they will not be discussed in detail here.

[17] *See , e. g.*, Licensing of Space Stations in the Domestic Fixed-Satellite Service, 54 Rad. Reg. (P&F) 2d 577 (1983), *recon. in part*, 99 FCC 2d 737 (1985) (hereinafter Reduced Orbital Spacing).

[18] *See , e. g.*, Routine Licensing of Large Networks of Small Antenna Earth Stations Operating in the 1214 GHz Frequency Bands, Mimeo No. 3588 (released April 9, 1986) (VSAT Order).

[19] *See , e. g.*, VSAT Order, *id.* ; Routine Licensing of Earth Stations in the 6 GHz and 14 GHz Bands Using Antennas Less Than 9 Meters and 5 Meters in Diameter, DA 87-391 (released April 13, 1987) (Declaratory Order).

[20] RCA's filing to modify its K-3 satellite is an example of this process. It requests that it be allowed to increase the satellite transmitter power amplifier output from 45 watts to 60 watts, to operate the higher power in a half CONUS beam and to incorporate transponder frequency filters so that only one-half of the transponder frequency is used. The unused frequency can be assigned to another co-located satellite. Thus, the two co-located satellites would double the number of television channels from 16 to 32 that are transmitted from a single orbit location. This mode of operation results in improved spectrum utilization efficiency because the power per unit bandwidth at this location is increased.

[21] VSAT Order, note 18, *supra*.

[22] *See* note 19, *supra*.

[23] *See , e. g.*, application of K-Mart Corporation, File Nos. 2500-DSE-PL-86 and 2496-DSE-PL-87; filed January 20, 1987.

[24] *See , e. g.*, applications of American Satellite Company dba CONTEL ASC, GE American Communications, Inc., Hughes Communications Galaxy, Inc. and National Exchange, Inc. all filed on September 15, 1987.

[25] The proposal we present today only applies to the 6' orbit segment between 87' and 93' W.L. for 1214 GHz band satellites. Two degree satellite spacings will continue in the remainder of the orbital arc for 1214 GHz satellites and for 46 GHz satellites in all portions of the arc.

[26] Although we have specified in 47 C.F.R. § 25.209 that earth station antennas must meet the 29-25 log [theta] sidelobe envelope requirement, actual measurements have shown that typical earth stations' antenna performance is approximately 2 to 3 dB better because a null normally occurs at approximately 1.5' off-axis at 1214 GHz for very small aperture antennas. We recognize that the location of this null is a function of antenna size. However, we expect that system users in this orbital arc segment will need to use transmit antennas with improved sidelobe patterns in order to effect coordination. *See* note 9, *supra*.

[27] This is assuming the use of an earth station that complies with the sidelobe envelope requirement of 47 C.F.R. § 25.209.

[28] The maximum power density level described here is the power level the satellite operator can coordinate both domestically and internationally. Satellite operators will, as always, be required to provide the Commission with their anticipated operating power in their application. The satellites will be permitted to operate at these higher powers once they have been successfully coordinated.

[29] Although we are not confronted with it today, the locations at the edge of the arc segment present the unique challenge of how to coordinate the higher power arc segment and the adjacent lower power satellite 2' away. Notwithstanding the fact that we expect these situations will be resolved through responsible use of current coordination procedures, we will consider the edge of arc problem and the technical characteristics of satellites located in these positions in making any future orbital assignments. Also, we invite industry comment on how to address this problem.

[30] In our Final Decision in this proceeding, we expect to grant RCA's request for transponder sales authority, assuming the comments do not demonstrate implementing the *Tentative Decision* would not serve the public interest. We also expect to grant RCA short extensions of the construction completion and launch dates for K-3. RCA commenced construction of K-3 by the required date, and its modification request was filed well in advance of the remaining implementation deadlines. However, because of the complex nature of this proceeding and the amount of time necessary to evaluate all issues raised, we have not been able to act on RCA's request in time for it to meet its original schedule. In light of RCA's efforts to implement its satellite proposal, including initiating coordination efforts with other operators and obtaining a firm launch date for an early Ariane launch, we are not adverse to granting RCA until April 1989 to complete construction and until October 1989 to launch the satellite.

[31] GTE Spacenet's satellite is horizontally polarized. RCA is designing its satellite with switchable polarization. At the 91.5' location, K-3 will be required to be vertically polarized.

[32] SBS-4 is the only 1214 GHz satellite operating within this segment. Aside from Spacenet III, which is authorized but not yet launched, no other 1214 GHz satellites are authorized to be located in this portion of the arc. In addition, Westar III at 91' W.L. is the only 46 GHz satellite in operation within the 87' - 93' W.L. segment.

[33] A major advantage of grouping SCPC-only satellites together is that SCPC services could use the full transponder because there will be no need to block out frequencies within transponders for coordination with television. This would conserve frequency spectrum.

[34] Also, see note 29, *supra*.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-465

In re

Resolution of Interference
between UHF channels 14 and
69 and Adjacent-channel
Land Mobile Operations

ORDER GRANTING REQUEST FOR EXTENSION OF TIME TO FILE COMMENTS

Adopted: January 4, 1988; Released: January 26, 1988

By the Chief, Mass Media Bureau:

1. On November 30, 1987, the Commission released a *Notice of Proposed Rule Making Notice of Inquiry* in MM Docket No. 87-465 (*Notice*), FCC 87-336, to solicit comments on proposals to amend Part 73 of the Commission's rules to address the problem of interference between television stations operating on channels 14 or 69 and land mobile stations operating on frequencies adjacent to either channel.

2. On December 16, 1987, the Association of Maximum Service Telecasters (MST) requested an extension of time until February 17, 1988 for filing comments, and an extension until March 2, 1988 for filing reply comments. MST contends that it needs additional time because (1) it is filing reply comments in the advanced television systems proceeding; (2) the Commission's proposed amendments in this proceeding raise complex and difficult technical and policy issues; and (3) the extension will not cause administrative delay because the Commission cannot implement its proposed amendments before resolving issues in the advanced television systems proceeding. MST also stated that the Land Mobile Communications Council, an interested party, has no objection to the requested extension of time.

3. For all of the reasons cited by MST in its Motion for Extension of Time, we believe it would be beneficial to provide the additional time sought.

4. Accordingly, IT IS ORDERED that the date for filing comments in MM Docket No. 87-465 is extended until February 17, 1988, and the date for filing reply comments is extended until March 2, 1988. This action is taken pursuant to authority provided in Section 4 (i) of the Communications Act of 1934, as amended, and Section 0.283 of the Commission's rules.

2. For further information concerning this proceeding, contact Louis C. Whitsett, Mass Media Bureau, (202) 632-7792.

FEDERAL COMMUNICATIONS COMMISSION

Alex D. Felker
Chief, Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In Re Applications of

BIDDLE COMMUNICATIONS INDUSTRIES, INC. — File No. 22690-CD-PML-1-87

For authority to construct additional base facilities in the Public Mobile Radio Service for Station KWU462 to operate on frequency 454.150 MHz at Fort Walton Beach and Pensacola, Florida

and

AMERICAN MOBILEPHONE PAGING, INC. — File No. 24266-CD-PML-1-87 — File No. 24267-CD-PML-1-87

For authority to construct additional base stations for Station KIF658 on frequency 454.150 MHz in the Public Land Mobile Radio Service at Crestview and Spanish Fort, Florida

MEMORANDUM OPINION AND ORDER

Adopted: December 28, 1987; Released: January 26, 1988

By the Chief, Mobile Services Division:

1. On March 5, 1987, Lester B. and Lucretia K. Biddle dba Northwest Florida Mobile Phone filed an application to construct additional base stations for Station KWU462 on frequency 454.150 MHz at Fort Walton Beach and Pennsacola, Florida.[1] The application was listed as accepted for filing on March 18, 1987 and was granted on October 21, 1987. The Chief, Mobile Services Division subsequently rescinded the grant of Biddle's Fort Walton Beach application by letter dated October 27, 1987 on the ground that American Mobilephone Paging, Inc. had filed an application for a proposed site at Crestview, Florida, that was mutually exclusive with Biddle's proposed site at Fort Walton Beach. Biddle's Fort Walton Beach application was subsequently returned to pending status.

2. Biddle filed a request for a comparative hearing in lieu of random selection for the Fort Walton Beach and Crestview applications. In support of its request, Biddle argues that in compliance with the exception stated in Section 22.23(c)(i), its proposed base station at Fort Walton Beach is only 32 miles from its existing base station operating on the same frequency at Seagrove Beach, Florida; that it can demonstrate a significant demand for expanded coverage including Fort Walton Beach; and that the public interest would be served by a comparative hearing examining both the needs of Biddle's existing and potential customers as well as those of American Mobilphone.

3. American Mobilphone filed Comments in support of Biddle's request for comparative hearing, stating that it filed an application for an additional site at Spanish Fort, Florida on the same day it filed its Crestview application; that its Spanish Fort application is mutually exclusive with Biddle's Pensacola application; that the proposed site at Spanish Fort is within 40 miles of its existing facilities; and that its present subscribers also require the additional facilities at Spanish Fort. American Mobilphone therefore urges that both its Spanish Fort application and Biddle's Pensacola application should also be decided by a comparative hearing, preferably combined with this proceeding.

4. Although Biddle has satisfied the first requirement under Section 22.23(c)(i), *i. e.*, that its Fort Walton Beach site is less than 40 miles from its existing base station operating on the same frequency at Seagrove Beach, Biddle has failed to meet the demand showing requirement as set forth in Section 22.23(c)(i) and as expanded upon in the case law. In *Ram Communications of Michigan, Inc.*, CC Docket No. 86-195 Mimeo No. 4848, released June 3, 1986 (RAM), the Common Carrier Bureau granted a request for comparative hearing after determining that the parties were in compliance with the requirements pertaining to transmitter location and had produced "specific information as to numbers of units, area covered and the purpose to be served by the present application." *Id.*, at p.2, n.2. Subsequently, in *Speed Call, Inc.*, DA-87-1513, released October 23, 1987, a similar request was denied on the ground that the applicant had merely submitted seventeen subscriber survey forms indicating a need for expanded coverage, instead of the more detailed information as submitted by the applicant in *REM*. Moreover, in *Radio Call Company of Long Island, Inc.* a representation that the expanded service area was needed, coupled with evidence of expansion, was held not to satisfy the substantial demand showing required under *RAM*. In its Request for Comparative Hearing, Biddle argued that 32% of its existing customer base, or 137 subscribers operating 217 units had submitted written requests for expanded area coverage, and supplied figures concerning the additional number of units that would be ordered should its service be expanded. However, Biddle appears to have derived these figures from the combined application for both locations, Fort Walton Beach *and* Pensacola. Biddle has not, however, requested a hearing regarding its Pensacola site; its request for a comparative hearing only concerned its proposed site at Fort Walton Beach and American Mobilphone's proposed site at Crestview. Based on the information provided by Biddle in its request, we have no way of knowing the demand for coverage of Fort Walton Beach only. By failing to specifically indicate the demand for increased coverage of the actual area with which the hearing or lottery would be concerned, Biddle has failed to meet the demand showing requirement for eligibility to request a comparative hearing for the Fort Walton Beach and Crestview applications under Section 22.23(c)(i) of the Commission's Rules.

5. Additionally, as American Mobilphone brought to our attention, the grant of Biddle's Pensacola application was in error. We have determined that application to be mutually exclusive with American Mobilphone's Spanish

Fort application. Therefore, we are hereby setting aside our action of October 27, 1987 which granted Biddle's Pensacola application. Moreover, American Mobilphone's Comments in the instant proceeding amount to an informal request for a comparative hearing for the Spanish Fort and Pensacola applications. American Mobilphone in its informal comments failed to include a demand showing pursuant to Section 22.23 (c)(i). Without such a showing, American Mobilphone's request is defective and does not justify a hearing.

6. We therefore deny Biddle's request to designate a comparative hearing for the Fort Walton Beach and Crestview applications. We also deny American Mobilphone's informal request to designate a hearing for the Spanish Fort and Pensacola applications. Biddle's captioned application will therefore will be included with American Mobilphone's applications in a lottery which will be announced in a future public notice.[2]

7. Accordingly, for the foregoing reasons, IT IS ORDERED, that the request for comparative hearing filed by Biddle Communications Industries, Inc., is hereby DENIED.

8. IT IS FURTHER ORDERED that a lottery between the captioned applications of Biddle Communications Industries, Inc. and American Mobilephone Paging, Inc. shall be held at a time and place to be specified in a subsequent public notice.

FEDERAL COMMUNICATIONS COMMISSION

Kevin J. Kelley
Chief, Mobile Services Division
Common Carrier Bureau

FOOTNOTES

[1] Mr. and Mrs. Biddle subsequently filed an application for a *pro forma* assignment of license to Biddle Communications Industries, Inc. (Biddle) a corporation which is owned 50% each by Mr. and Mrs. Biddle. The application was granted in *Public Notice*, Report No. PMS-87-28-A, released April 8, 1987. The application for additional facilities was later amended accordingly.

[2] Under Section 1.823(b) of the Commission's rules, petitions to deny filed against applications for authority in the Public Land Mobile Service will *not* be reviewed prior to conducting the random selection.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 86-143

In re Applications of

LINDA CROOK — File No. BPH-850228MD
Quincy, Illinois

CYNTHIA ESCAJEDA CART — File No. BPH-850528MC
Quincy, Illinois

For Construction Permit
for a New FM Station

Appearances

Linda Crook, pro se; *Robert L. Olender*, and *Aaron Shainis*, on behalf of Cynthia Escajeda Cart.

DECISION

Adopted: January 11, 1988; Released: January 26, 1988

By the Review Board: MARINO (Chairman), BLUMENTHAL, ESBENSEN.

Board Chairman MARINO:

1. The main question litigated in this comparative hearing was whether Linda Crook, the successful applicant below, was a "mere figurehead" for her husband, the real-party-in-interest. *See generally N.E.O. Broadcasting Co.*, 60 RR 2d 125 (Rev. Bd. 1986). The *Initial Decision* of Administrative Law Judge Chachkin, 2 FCC Rcd 3511, (ID.) resolved that issue in Crook's favor. *ID.*, para. 36. Thereafter, the ALJ held that Crook was the superior comparative applicant because her substantial preference for local residence offset her competitor's, Ms. Cart's, substantial minority preference. Crook's moderate to substantial civic participation preference outweighed Cart's slight credit for her auxiliary power proposal. ID. paras. 39, 41. We do not have to reach the "figurehead" or real-party-in-interest question, because even *arguendo* if that issue were resolved in Crook's favor, her enhancement credit for local residence and civic activities would not outweigh Cart's substantial preference for minority ownership combined with the merit for auxiliary power.

2. In the *Initial Decision*, both applicants were awarded 100% quantitative integration credit, (*ID.*, para. 35), and both applicants were awarded gender preferences. *ID.*, para. 37. Crook was awarded a "substantial" enhancement preference for local residence, which was found to completely offset Cart's minority preference. Ultimately, Crook prevailed because of her "moderate to substantial" preference for civic activities, which outweighed Cart's "slight" preference for her auxiliary power proposal. *ID.*, para. 41. Cart argues on appeal that her substantial preference for 100% minority ownership, coupled with her auxiliary power credit, cannot be defeated by Crook's attempt to inflate her "local residency credit predicated on her sporadic visits to Quincy...[and] her civic activities [which] are so minimal and remote in time as to lack any decisional significance." (Br. II, 8-9).

3. *Radio Jonesboro, Inc.*, 100 FCC 2d 941, 945-946, 57 RR 2d 1564, 1567 (1985), held that: "Minority ownership and local residence have equal significance in choosing the comparative superior applicant." That decision rested on a solid factual record which left no room for doubt that the winning applicant was entitled to a substantial preference for the local residence of its two principals. There, the principals had resided continuously in (or near) the community since 1957 and 1966. *Radio Jonesboro, supra*, 96 FCC 2d 1106, 1117-1118 (Rev. Bd. 1984).

4. Here, by contrast, the facts establish that Crook was born in Quincy in 1950. She lived in that community between 1950 and 1975, when she married and moved to the West Coast. Thus, Crook's past full-time residency in the community was remote in time, more than a decade ago, and much of it occurred during her youth. Such remote residence is entitled to significantly diminished credit. *See Ruth Payne Carmen*, 1 FCC Rcd 46, at para. 4. (Rev. Bd. 1986). Crook urges that, since 1975, she has returned to Quincy during the summer months, and when her husband is required to travel on business. But, even if we fully credit Crook's estimate that she spends approximately half of each year in Quincy, we could not inflate that residency into the substantial preference she claims. At best, since 1975 she has resided in that community for 50% of the time. This simply does not compare with the continuous, lengthy, local residence, which received a substantial credit in *Radio Jonesboro*. Using our traditional method of gradation, Crook is entitled to a much reduced residency "plus," which would not offset Cart's substantial minority ownership credit. [1]

5. Nor can the gap between the applicants be closed by Crook's claims of credit for civic activities, which are even more questionable when contrasted with the extensive, varied, and long-term record of achievement which received only moderate credit in *Radio Jonesboro, supra* 100 FCC 2d at 947. Crook seeks credit for her membership, from the age of 12 to 16, in an organization which collected clothes for the poor. That activity is so remote in time, some 20 years ago, as to be meaningless in terms of an appreciation of the current problems, needs and interest in the community. In 1981, for a short period of time, Crook also joined the Ladies of Charity, but the record establishes that she did not participate in any of their activities, and is therefore not entitled to any credit. In 1982, she also helped to raise funds for the local library, and during the year she was a houseparent at a home for delinquent boys. *I.D.*, para. 11. We largely agree with Cart's contention that "these activities are so removed and so relatively insignificant that they cannot possibly be the tilting force in this case." Cart Br. 9. Thus, Crook receives a slight preference for her episodic civic activities. On the other hand, Cart is entitled to a substantial minority preference, and a slight preference for auxiliary power.

6. In sum, Cart's undisputed preference for 100% minority ownership and her "plus" for auxiliary power overbalances Crook's more modest recognition for part-time local residence and minor civic activities. *See gen-*

erally Waters Broadcasting Corp., 91 FCC 2d 1260 (1982) (long-time community residence with some civic activities loses to minority competitor), *aff'd sub nom West Michigan Broadcasting*, 735 F. 2d 601 (D.C. Cir. 1984).

7. ACCORDINGLY, It Is Ordered that the application of Cynthia Escajeda Cart, BPH-850528MC IS GRANTED, and that the application of Linda Crook IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Joseph A. Marino
Chairman, Review Board

FOOTNOTE

[1] In the proceeding below, Ms. Crook attempted to claim a minority preference as a Native American. The ALJ refused to grant this sought after preference (ID., paras. 12, 38). Ms. Crook did not except to these findings and conclusions; thus, she is precluded from making a further claim for such a preference. 47 CFR 1.277(a). In passing, however, we would likely concur with the ALJ that Ms. Crook is not entitled to a minority preference for the reasons set forth in the ID, at para. 38.

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 83-1376

In the Matter of

Integration of Rates and Services for the Provision of Communications by Authorized Common Carriers between the Contiguous States and Alaska, Hawaii, Puerto Rico and the Virgin Islands — RM-4436

Integration of Rates and Services for the Provision of Communications by Authorized Common Carriers between the United States Mainland and the Offshore Points of Hawaii, Alaska, and Puerto RicoVirgin Islands, *et al.*

MEMORANDUM OPINION AND ORDER

Adopted: December 29, 1987 Released: December 30, 1987

By the Chief, Common Carrier Bureau:

1. On November 2, 1987, Alascom, Inc. (Alascom) filed a motion requesting that the Commission order the American Telephone and Telegraph Company (AT&T) to continue to provide interstate message toll service (MTS) jointly with Alascom in accordance with the Interim Alaska-Hawaii MTS Agreement (Interim Agreement) between the two carriers until 60 days after the final resolution of the issues in this proceeding.[1] In its motion, Alascom argues that the Interim Agreement should continue until the Alaska Joint Board and the Commission have issued a recommended decision on the AlaskaHawaii issues before them. This action is necessary, Alascom states, in order to prevent service dislocations and to achieve an orderly transition to a permanent market structure once decisions have been reached. Alascom states that it is unlikely that those decisions can be reached by the end of 1987 when the Interim Agreement terminates.[2] As discussed below, we grant Alascom's motion in part.

2. Until 1986, service between Alaska and Hawaii had been provided jointly by Alascom and Hawaiian Telephone Company (Hawtel). In 1986, AT&T entered the Hawaii market and began providing service from Hawaii to Alaska in conjunction with Alascom, pursuant to the terms of the Interim Agreement. The Interim Agreement became necessary because with equal access implementation, Hawtel's toll switch and operator facilities in Hawaii could not accomodate more than one interexchange carrier when the carrier employs HawTel's toll switch and its point of presence (POP). AT&T has since completed its own toll switching facilities and has not sought to continue the Interim Agreement after its scheduled termination on December 31, 1987.

3. Hawaii does not take a position on which carrier should provide Hawaii-Alaska service, but encourages the Commission to order rate integration for Hawaii-Alaska MTS, WATS and 800 service rates now.[3] Alaska similarly argues that rate integration between Hawaii and Alaska has been previously decided and the Commission should now proceed with rate integration. In its opposition, AT&T contends that the only argument Alascom advances to support its motion is that it is necessary to avoid service disruption and dislocation. However, AT&T notes that it has already entered into contractual arrangements with General Communications Incorporated (GCI) to provide service from Hawaii to Alaska. On November 3, 1987, AT&T applied for authority to acquire digital transmission capacity from GCI's POP in Honolulu, Hawaii to various points in Alaska pursuant to Section 214(a) of the Communications Act.[4] Moreover, AT&T argues that it has offered to let Alascom use AT&T facilities to carry Alascom's traffic to Hawaii, on a unit cost basis. AT&T states that service with GCI is more cost-effective and that Alascom should not be allowed to use the regulatory process to hamper competition.

4. In its reply comments, AT&T argues that the comments of Hawaii and Alaska relate to rate integration, not Alascom's motion to require AT&T to provide joint service with Alascom. Alascom argues, on the other hand, that rate integration is a key issue before the Alaska Joint Board and that the *status quo* should be maintained until the Alaska Joint Board and the Commission have acted on the issues before them.

5. The Alascom motion asks the Commission to act to avoid potential service disruption on the Alaska-Hawaii route by ordering AT&T to continue providing services jointly with Alascom until 60 days after the completion of the Alaska Joint Board proceeding. We find that action is necessary to avoid service disruption beginning January 1, 1988. It is undisputed that AT&T may not proceed with its alternative service configuration until it has received authorization pursuant to Section 214 of the Communications Act. We do not expect to act upon that application before the AT&T-Alascom Agreement expires. Thus, we conclude that it is in the public interest for AT&T to continue providing service jointly with Alascom pending resolution of the issues presented by AT&T's Section 214 application.[5] Accordingly, we require that AT&T and Alascom continue to provide Alaska- Hawaii service jointly to avoid service disruption until we address AT&T's Section 214 application.

6. ACCORDINGLY, IT IS ORDERED, pursuant to Sections 4(i), and 201(a) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), and 201(a), that the Motion filed by Alascom requesting the Commission to order AT&T to provide service with Alascom, Inc. IS GRANTED TO THE EXTENT INDICATED HEREIN.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

[1] On September 27, 1985, the Commission adopted a Notice of Proposed Rule Making and established a Joint Board in this docket (the Alaska Joint Board) pursuant to Section 410(c) of the Communications Act of 1934, as amended. The Joint Board has been asked to submit recommendations on several related issues. Those issues include: (1) what, if any, market structure changes are necessary to harmonize the Commission's rate integration and pro- competitive policies for the Alaska interstate telecommunication market; (2) what separations or other Commission rule changes, if any, would be necessary to implement any market structure changes; and (3) whether the Commission's rate integration and competitive policies should apply on the Alaska-Hawaii route. *See* Integration of Rates and Services, 50 Fed. Reg. 41714 (Oct. 15, 1985); Integration of Rates and Services, 2 FCC Rcd 607 (1987).

[2] Comments on the Alascom motion were received from the states of Alaska and Hawaii. AT&T filed an Opposition. Reply Comments were filed by Alascom and AT&T.

[3] Rate integration is the Commission policy adopted to provide services between the contiguous states and Alaska, Hawaii, Puerto Rico, and the Virgin Islands at rates that are equivalent to those prevailing for comparable distances in the contiguous states. Establishment of Domestic Communications Satellite Facilities, 35 FCC 2d 844, 856-57 (*Domsat II*), *aff'd sub* nom. Network Project v. FCC, 511 F.d 786 (D.C.Cir. 1975). See also Integration of Rates and Services, 62 FCC 2d 693 (1976); Integration of Rates and Services, 87 FCC 2d 25 (1981).

[4] 47 U.S.C. § 214(a) and Section 63.01 of the Commission's rules (47 C.F.R. § 63.01). See File No. W-P-C-6136.

[5] See also Domsat II 35 FCC 2d at paras. 35-42; 47 C.F.R. § 63.62(b).

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

RCA GLOBAL COMMUNICATIONS, INC. AND WESTERN UNION TELEGRAPH COMPANY FILE JOINT MOTION FOR ORDER TERMINATING PROCEEDINGS IN CC DOCKET NO. 78-97, PHASES I AND II, CC DOCKET NO. 82-122 AND FILE NO. E-87-139

Released: January 12, 1988

PLEADING CYCLE ESTABLISHED

On December 31, 1987 RCA Global Communications, Inc. (RCA Globcom) and Western Union Telegraph Company (Western Union) filed a joint motion requesting that proceedings in CC Docket No. 78-97 Phases I and II, CC Docket No. 82-122 and File No. E-87-139 be terminated insofar as those proceedings involve claims between RCA Globcon and Western Union.

Phase I of CC Docket No. 78-97 was an investigation of the lawfulness of Western Union's telex and TWX rates for service to both the public generally and to RCA Globcom and other interconnecting record carriers (IRCs) for a period through April 1981. In Phase II of CC Docket No. 78-97, the Commission investigated the lawfulness of Western Union's telex and TWX rates for the period after April 1981 and concluded that the IRCs were not entitled to a discount from Western Union's public rates and that those rates were not otherwise unlawful. In light of the Commission's findings in Phase II of CC Docket No. 78-97, Western Union sought reimbursement for the 15 percent interim discount it was required to give to other interconnecting carriers as a result of the Commission's Interim Order in CC Docket No. 82-122. Finally, the Commission's May 21, 1987 Order in CC Docket No. 82-122 directed Western Union to file a formal complaint as a means of resolving the computational issues arising from its May 2, 1986 and May 21, 1987 Orders. Western Union filed such a complaint on July 9, 1987 (File No. E-87-139).

Interested parties may file comments regarding this joint motion no later than February 11, 1988. Reply comments may be filed no later than February 26, 1988.

Copies of the joint motion may be obtained from the Commission's contract copier, International Transcription Service, Inc. (ITS), Room 246, 1919 M Street, N.W., Washington, D.C. 20554. A copy of the joint motion is also on file and available for public inspection in the Tariff Division, Common Carrier Bureau, Room 518, 1919 M Street, N.W. An original and five copies of all comments and replies must be filed, in accordance with Section 1.51(c) of the Commission's Rules. In addition, one copy of each comment or reply must be filed with ITS.

For further information, contact Linda Goodman, Tariff Division (202) 632-6917.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 86-362

In re Applications of

BOTT COMMUNICATIONS, INC. File No. BPH-850530MA

For Construction Permit
for a New FM Station
Hastings, Nebraska

Appearances

Harry C. Martin on behalf of Bott Communications, Inc.

SUMMARY DECISION OF ADMINISTRATIVE LAW JUDGE WALTER C. MILLER

Issued: January 7, 1988; Released: January 21, 1988

INTRODUCTION

1. What started out as a five-party comparative FM proceeding has dwindled down to one applicant, Bott Communications, Inc. (Bott). *See* 51 F.R. 34684 published September 30, 1986; FCC 86M-3499 released December 2, 1987; FCC 87M-428 released February 27, 1987; FCC 87D-15, released April 16, 1987; and FCC 88M-014 released January 6, 1988.

2. On January 6, 1988, Bott moved for a Summary Decision on the only basic qualifying issue outstanding against it, the designated air hazard issue. *See* 51 F.R. 34684 *supra.*, Issue 2. Attached to Bott's motion is a Determination of No Hazard to Air Navigation that the FAA's Kansas City, Missouri office issued on October 14, 1987.

FINDINGS OF FACT

3. The Chief, Audio Services Division designated an air hazard issue against Bott "[s]ince no determination has been received from the Federal Aviation Administration as to whether the antenna proposed by [. . . Bott . . .] would constitute a hazard to air navigation . . .

4. Subsequently, on April 10, 1987, Bott filed an amended request with the Review Board specifying a new transmitter site. Bott claimed that its new site would satisfy the FAA's concerns, and eliminate the need for any further hearing on its air-hazard issue.

5. As noted (Para. 2 *supra.*), the FAA issued its determination of no hazard four days later, and on December 23, 1987, the Review Board accepted Bott's April 10th amendment. Thus Bott has demonstrated that its proposed antenna structure will not pose a menace to air navigation. The truth is clear. No genuine issue of fact exists, and designated Issue 2 is resolved in Bott's favor.

CONCLUSIONS OF LAW

6. With the air hazard issue resolved in its favor, and no other basic qualifying issues remaining against it, Bott's FM Hastings application can be granted. It is qualified to construct and operate as proposed. *See* 51 F.R. 34684 *supra.*, at para. 17.

SO the Motion for Summary Decision that Bott Communications, Inc. filed on January 6, 1988 IS GRANTED; and Unless an appeal is taken from this Summary Decision or the Commission reviews it on its own motion, Bott Communications, Inc.'s application (BPH-850530MA) for Hastings, Nebraska IS GRANTED;[1] and

This proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Walter C. Miller
Administrative Law Judge

FOOTNOTE

[1] If exceptions aren't filed within 30 days, and the Commission doesn't review the case on its own motion, this Summary Decision will become effective 50 days after its public release. *See* 47 CFR 1.276(d).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 86-474

In the Matter of

Amendment of Section 73.202(b), RM-5438
Table of Allotments,
FM Broadcast Stations.
(Marietta, Ohio and Ravenswood,
West Virginia)

MEMORANDUM OPINION AND ORDER

Adopted: November 24, 1987; Released: January 21, 1988

By the Chief, Policy and Rules Division:

1. The Commission has before it the Petition for Reconsideration filed by Greenup County Broadcasting, Inc. (GCBI) and Hometown Broadcasting of McArthur, Inc. (Hometown) (jointly "petitioner), of the *Report and Order*, 2 FCC Rcd 4681 (1987), which substituted Channel 291A for Channel 272A at Ravenswood, West Virginia in order to upgrade the facilities of Station WEYQ-FM at Marietta, Ohio to Channel 271B1 in lieu of Channel 271A. Randy Jay Communications Corporation (Randy Jay), permittee of Station WRAU(FM), Ravenswood, West Virginia and Employee Owned Broadcasting Corp. (Employee Owned), licensee of Station WEYQ-FM at Marietta, each filed an opposition to the petition for reconsideration. Petitioner filed reply comments to the oppositions.

2. Petitioner seeks partial reconsideration of the above-captioned proceeding in regards to the allotment of Channel 291A to Ravenswood, West Virginia. It argues that such an allotment precludes the allotment of Channel 291A to McArthur, Ohio.[1] Petitioner admits that three other channels are available for allotment at McArthur. It contends that the Commission's policy for resolving conflicting proposals by conducting its own search and allotting an alternative channel should have been applied in providing McArthur with a first local service. Petitioner states that it was unable to participate in this proceeding earlier because it would have been required to monitor all Commission FM notices of proposed rule making dealing with communities in Ohio, West Virginia and Kentucky, which would have been unreasonable. It states that it relied on the Commission to protect its proposal in the data base and identify conflicting proposals. Accordingly, it seeks the reconsideration of the substitution of Channel 291A for Channel 272A at Ravenswood, West Virginia, in conjuction with the provision of a first local service at McArthur, Ohio.

3. Randy Jay opposes the petition for reconsideration and urges for the denial of the request. It asserts that the petition relies on facts not previously presented herein, therefore, fails to meet the threshhold requirements of Section 1.429(b) of the Commission's Rules. Randy Jay addresses petitioner's failure to participate in this proceeding, by the procedural deadline for filing counterproposals. It contends that to permit consideration of the McArthur proposal at this time "would be contrary to the interests of sound administrative practice and administrative finality." Further, it urges the Commission not to depart from the well-established cut- off procedures in FM rule making proceedings, especially in light of the acknowledgment by the petitioner that at least three other channels are available for allotment at McArthur.

4. Employee Owned opposes the petition and seeks its dismissal. It argues that the request for reconsideration is in reality an untimely filed counterproposal seeking allocation of Channel 291A to McArthur. It asserts that for the Commission to consider the request would be a severe disservice to the public interest by delaying the upgrade of its station. It points out the fact that petitioner has never participated in the instant proceeding nor can it satisfy the requirements of Section 1.429 of the Rules.

5. Petitioner, in its reply comments, argues that the public interest would be served by permitting a first local service to McArthur and the surrounding Vinton County. It asserts it is obliged to protect its legal position for Channel 291A at McArthur since the proposal was advanced more than 18 months ago as a "further counterproposal" in the *Greenup, Kentucky* proceeding.[2]

6. We have carefully considered the petitioner's arguments and conclude that the petition for reconsideration is procedurally defective in that it sets forth a counterproposal for McArthur, Ohio, after the date for such proposals in violation of Sections 1.420(d) and 1.429 of the Commission's Rules. Counterproposals can be advanced *only* in initial comments. *See* also the Appendix to the *Notice*. In addition, the petition relies on facts which have not previously been presented in this proceeding. The Commission deemed the proposal unacceptable in the context of the *Greenup, Kentucky and Athens, Ohio* proceeding, [3] since it was advanced therein as a "further counterproposal" which also failed to comply with Section 1.420(d) of the Rules. Therefore, the Commission was under no obligation to protect the proposal while it is processing other requests. It is the responsibility of the party interested in pursuing the allotment to submit a new petition on a timely basis, in accordance with Section 1.401 of the Commission's Rules taking into consideration any other pending proposals. In light of the fact that the petitioner has admitted that there are at least three other channels available for allotment to McArthur, the community will not be deprived of an opportunity to seek a first local FM service.[4] We do not believe the public interest would be served by considering an untimely counterproposal in the context of this proceeding, which would delay the inauguration of improved and new service to the public (in at least three communities).

7. Based on the aforementioned, IT IS ORDERED, That the Petition for Reconsideration, filed by Greenup County Broadcasting, Inc. and Hometown Broadcasting of McArthur, Inc., IS DENIED and the action in the *Report and Order, supra* substituting Channel 271B1 for Channel 271A at Marietta, Ohio and Channel 291A for Channel 272A at Ravenswood, West Virginia is HEREBY AFFIRMED.

8. In the *Report and Order, supra*, the Commission gave Employee Owned 90 days from the effective date of the *Order* to file its application for Channel 271B1. The filing of the petition for reconsideration caused a stay of the

effective date pursuant to Section 1.420(f) of the Commission's Rules. Since the original action has now been reinstated, Employee Owned is expected to submit its application specifying new facilities on Channel 271B1 within 30 days of the release date of this action.

9. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Bradley P. Holmes
Chief, Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] The McArthur proposal was denied as an untimely filed counterproposal in the *Greenup, Kentucky and Athens, Ohio* proceeding, 2 FCC Rcd 4319 (1987). A Petition for Reconsideration has been filed in that proceeding, Public Notice given September 16, 1987, Report No. 1677.

[2] *See* fnt. 1, *supra*.

[3] *See* fnt. 1, *supra*.

[4] On November 2, 1987, Hometown filed, in accordance with Section 1.401 of the Commission's Rules, an acceptable petition for rule making requesting the allotment of Channel 254A to McArthur (RM-6144).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-610

In the Matter of

Amendment of Section 73.606(b), RM-5898
Table of Allotments,
TV Broadcast Stations.
(Bakersfield, California)

NOTICE OF PROPOSED RULE MAKING

Adopted: December 21, 1987; Released: January 21, 1988

By the Chief, Allocations Branch:

1. Before the Commission for consideration is the petition for rule making filed on behalf of Gene Denari (petitioner), seeking the allotment of UFH television Channel 65 to Bakersfield, California, as that community's fifth commercial television service. Petitioner states that should this proposal ultimately be adopted, he will apply for the channel.

2. Bakersfield (population 105,611),[1] the seat of Kern County (population 403,089), is located approximately 175 kilometers (110 miles) northwest of Los Angeles, California.

3. A staff engineering study has determined that Channel 65 can be allotted to Bakersfield in conformity with the minimum distance separation requirements contained in Section 73.610 and Section 73.698 of the Commission's Rules. However, Channel 65 is closely spaced to the proposed use of Channel 66 for private land mobile service in Los Angeles.[2] The distance between the two communities is 101.3 miles whereas under the proposal, we are concerned with adjacent channel usage within 140 miles. Therefore, depending on the decision ultimately reached in Docket 85-172, if Channel 65 is allotted to Bakersfield, the quality of its reception may be affected by the proposed land mobile service in Los Angeles.

4. We believe the public interest would be served by proposing the allotment of UHF television Channel 65 to Bakersfield, since it could provide an additional outlet in the community for the expression of diverse viewpoints and programming.[3] Therefore, we shall seek comments on the proposal to amend the TV Table of Allotments, Section 73.606(b) of the Commission's Rules, as follows:

	Channel No.	
City	Present	Proposed
Bakersfield, California	17,23-,29, *39-,45+[4]	17,23-,29, *39-,45+,65+

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **March 14, 1988,** and reply comments on or before **March 29, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Jerrold Miller, Esq.
Miller & Fields, P.C.
P.O. Box 33003
Washington, D.C. 20033

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Mark N. Lipp
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will

be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

FOOTNOTES

[1] Population figures were taken from the 1980 U.S. Census.

[2] *See* , Notice of Proposed Rule Making, General Docket 85-172, Further Sharing of the UHF Television Band by Private Land Mobile Services, 50 FR 25587, published June 20, 1985.

[3] The Commission recently issued an Ord er freezing the filing of construction permit applications for vacant channels in certain metropolitan areas, which includes Los Angeles. Bakersfield is located within the prohibited distance to Los Angeles (175 miles). Consequently, should Channel 65 be ultimatelyallotted to Bakersfield, the filing of applications therefor may be delayed. *See* , MM Docket No. 87-268, Notice of Inquiry, 52 FR 34259, September 10, 1987, to explore the uses of advanced television systems (ATV) in broadcasting, and Order (RM-5811), 52 FR 28346, July 29, 1987, freezing the filing of construction permit applications for vacant UHF television channels in the affected markets.

[4] The Commission recently substituted Channel 45+ for Channel 48 in Bakersfield in MM Docket No. 85-251, 2 FCC Rcd 6077 (1987). A petition for reconsideration of this action is pending. Public Notice of December 8, 1987, Report No. 1696.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-180

In the Matter of

Amendment of Section 73.202(b), RM-5723
Table of Allotments,
FM Broadcast Stations.
(Loveland, Colorado)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: December 22, 1987; Released: January 21, 1988

By the Chief, Allocations Branch:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 2 FCC Rcd 3426 (1987), issued at the request of Aspen Leaf Corp., dba KLOV AM & FM, Debtor-In-Possession (petitioner), proposing the substitution of Channel 273C2 for Channel 272A at Loveland, Colorado, and modification of the license of Station KLOV-FM to specify operation on the higher powered channel. Comments supporting the substitution were filed by petitioner. No oppositions to the proposal were received.

2. As indicated in the *Notice*, petitioner holds the assets of Station KLOV-FM as debtor-in-possession under Chapter 11 of the Bankruptcy Code. Pursuant to a court approved plan of reorganization, petitioner proposes to sell the assets to Crown Broadcasting, Inc. (assignee).[1] However, the assignee's obligation to consummate the assignment plan is conditioned upon the successful outcome of this proceeding.

3. As indicated in the *Notice*, Channel 273C2 can be allotted to Loveland, Colorado, at the petitioner's proposed transmitter site, 16 kilometers (10 miles) northeast[2] of the community, consistent with the minimum distance spacing requirements specified in Section 73.207(b) of the Commission's Rules. Pursuant to the technical requirements of Section 73.1030(b)(1)-(5) of the Commission's Rules, petitioner must provide interference protection to the Table Mountain Radio Receiving Zone in Boulder County, Colorado.

4. In consideration of the above, we believe there are public interest justifications inherent in this proposal since it could provide a first wide coverage area FM service to Loveland, as well as preserve the only local FM outlet in the community. In addition, pursuant to Section 1.420(g) of the Commission's Rules, we shall modify the license of Station KLOV-TV herein to specify operation of Channel 273C2 in lieu of Channel 272A.

5.Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective March 7, 1988, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect ot Loveland, Colorado, as follows:

City	Channel No.
Loveland, Colorado	273C2

6.IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Station KLOV-FM, Loveland, Colorado, IS MODIFIED, to specify operation on Channel 273C2 in lieu of Channel 272A, subject to the following conditions:

(a) Within 90 days of the effective date, the this *Order* licensee shall submit to the Commission a minor change application for a construction permit (Form 301), a specifying the new facility;

(b)Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c)Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.301 of the Commission's Rules.

7. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

8. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Mark N. Lipp
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

FOOTNOTES

[1] *See* BALH-871019GK.

[2] Reference coordinates at the restricted site are 40-27-00, 104-54-00.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-391

In the Matter of

Amendment of Section 73.202(b),	RM-5797
Table of Allotments,	
FM Broadcast Stations.	
(Fowler, California)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: December 24, 1987; Released: January 21, 1988

By the Chief, Allocations Branch:

1. The Commission considers herein the *Notice of Proposed Rule Making*, 2 FCC Rcd 5705 (1987), issued at the request of Bilmar Communications, Inc. (petitioner), licensee of Station KEZL-FM (Channel 244A), Fowler, California, proposing the substitution of Channel 244B1 for Channel 244A and modification of its license accordingly to specify operation on the higher-powered channel. Supporting comments were filed by petitioner reaffirming its interest in the proposal. No other comments were received.

2. As indicated in the *Notice*, Channel 244B1 can be allotted to Fowler at the petitioner's present site[1] consistent with the minimum distance separation requirements contained in Section 73.207(b) of the Commission's Rules.[2]

3. We believe the public interest would benefit from the substitution of Channel 244B1 for Channel 244A at Fowler, since it could provide an expanded radio service to the community and surrounding areas. Therefore, and in accordance with the provisions of Section 1.420(g) of the Commission's Rules, we are herein modifying the license of Station KEZL-FM to specify operation on Channel 244B1 in lieu of Channel 244A.

4. In view of the above, and pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **March 7, 1988,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to Fowler, California, as follows:

City	Channel No.
Fowler, California	244B1

5. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Bilmar Communications, Inc. for Station KEZL-FM, IS MODIFIED effective **March 7, 1988,** to specify operation on Channel 244B1 in lieu of Channel 244A, subject to the following conditions:

(a) Within 90 days of the effective date, of this *order* the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.301 of the Commission's Rules.

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Mark N. Lipp
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] Petitioner's site is located at the following coordinates: 36-41-39; 119-43-57.

[2] Required separation to Station KSEQ(FM) (Channel 246B), Visalia, CA is met based on applying the provisions of Section 73.208(c)(7) of the Commission's Rules.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-17

In the Matter of

Amendment of Section 73.202(b), RM-5561
Table of Allotments,
FM Broadcast Stations.
(Searcy, Arkansas)

REPORTAND ORDER
(Proceeding Terminated)

Adopted: December 24, 1987; Released: January 21, 1988

By the Chief, Allocations Branch:

1. The Commission considers herein the *Notice of Proposed Rule Making*, 2 FCC Rcd 1176 (1987), issued in response to the request of KWCK, Inc. (petitioner), licensee of Station KSER(FM) (Channel 257A), Searcy, Arkansas, seeking the substitution of Channel 260C2 for Channel 257A and modification of its license accordingly to specify operation on the higher-powered channel. Supporting comments were filed by petitioner reaffirming its intention to apply for the channel, if allotted. No other comments were received.

2. As indicated in the *Notice*, Channel 260C2 can be allotted to Searcy in conformity with the minimum distance separation requirements specified in Section 73.207(b) of the Commission's Rules, provided the transmitter site therefor is restricted to an area at least 21.5 kilometers (13.4 miles) northwest of the community[1] to avoid short-spacing to Station WMC(FM) (Channel 259), Memphis, Tennessee.[2]

3. In light of the above, we believe the public interest would benefit by substituting Channel 260C2 for Channel 257A at Searcy, Arkansas, since it would provide that community with its first wide coverage area FM service. Therefore, and in accordance with the provisions of Section 1.420(g) of the Commission's Rules, we are herein modifying the license of Station KSER(FM) to specify operation on Channel 260C2.

4. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **March 7, 1988,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to Searcy, Arkansas, as follows:

City	Channel No.
Searcy, Arkansas	260C2

5. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Station KSER(FM), Searcy, Arkansas, IS MODIFIED effective **March 7, 1988,** to specify operation on Channel 260C2 in lieu of Channel 257A, subject to the following conditions:

(a) Within 90 days of the effective date, of this *Order* the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.301 of the Commission's Rules.

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Mark N. Lipp
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] Reference coordinates of the specified site are as follows: 35-20-39; 91-56-29.

[2] Although the *Notice* also advised that final action in this proceeding must await the issuance of a license to Station KTCS(FM) (Channel 260C2), Ft. Smith, Arkansas, that condition has been removed as a result of its reclassification. The separation is also met based on the construction permit issued to Station KTCS(FM) to reclassify its facilities to maintain Class C status (*i.e.*, 251.2 kilometers actual distance vs. 249 kilometers required).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-256

In the Matter of

Amendment of Section 73.202(b), RM-5793
Table of Allotments,
FM Broadcast Stations.
(Kill Devil Hills, North Carolina)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: December 21, 1987; Released: January 21, 1988

By the Chief, Allocations Branch:

1. At the request of Joseph A. Booth (petitioner), the Commission has before it the *Notice of Proposed Rule Making*, 2 FCC Rcd 4344 (1987), proposing the allocation of Channel 281C1 to Kill Devil Hills, North Carolina, as the community's first local FM service. Petitioner filed comments reiterating his intention to apply for the channel, if allocated. No other comments were received. Channel 281C1 can be allocated to Kill Devil Hills in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction.

2. We believe the public interest would be served by allocating Channel 281C1 to Kill Devil Hills since an interest in providing the community with its first local service has been expressed. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **March 7, 1988,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Kill Devil Hills, North Carolina	281C1

3. The window period for filing applications will open on **March 8, 1988,** and close on **April 7, 1988.**

4. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

5. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Mark N. Lipp
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

RCA AMERICAN COMMUNICATIONS, INC. File No. I-T-C-85-051

For authority to provide for the Department of Defense a television channel and associated audio from Hollywood, California, to United States military bases in Thule and Sondrestrom, Greenland via the Satcom satellite system.

ORDER AND AUTHORIZATION

Adopted: January 14, 1988; Released: January 27, 1988

By the Acting Chief, International Facilities Division:

1. On May 2, 1985, the Commission granted RCA American Communications, Inc. (RCA) conditional authority pursuant to Section 214 of the Communications Act of 1934, as amended, to make available to the Armed Forces Radio and Television System (AFRTS) a television channel and associated audio for the distribution of television programming from Hollywood, California, to United States military bases in Thule and Sondrestrom, Greenland via its Satcom satellite system.[1] As noted herein, this order constitutes the final authorization in the transborder process.

2. In 1981, after consultation with the Department of State, the Commission set forth its transborder policy and established procedures governing the use of U.S. domestic satellites for the transmission of certain international telecommunication services to points within the footprints of those satellites.[2] The Commission determined that domestic satellites could be used for transborder services where INTELSAT is incapable of providing a service or where it would be clearly uneconomical or impractical to use the INTELSAT system for that service. The Commission stated that applications meeting this standard could not be implemented until: 1) the concurrence of the appropriate governmental entities had been obtained; 2) the consultation requirement of Article XIV(d) of the INTELSAT Agreement had been fulfilled; and 3) the Chief, Common Carrier Bureau issued an order authorizing the implementation of service.

3. The first two conditions have now been fulfilled. The Commission received notification from the Department of State on November 16, 1987, that the United States has fulfilled its obligations under Article XIV(d) and that the Commission may proceed to grant RCA final authority for extension of AFRTS receive-only services to Greenland via the Satcom II-R satellite.[3]

4. Since the conditions contained in the Commission's transborder orders have been fulfilled, we find that implementation of the transborder service specified in the above-captioned application will serve the present and future public convenience and necessity.

ORDERING CLAUSE

5. Accordingly, IT IS ORDERED that the application of RCA American Communications, Inc., File No. I-T-C-85-051, IS GRANTED and RCA may provide television programming to United States military bases in Thule and Sondrestrom, Greenland over its Satcom II-R satellite without any further action by this Commission.

6. The authorization consitutes the final step for the provision of transborder services through domestic satellites with respect to the U.S. regulatory process. It does not, however, dispense with any requirements that may be imposed by the other country involved.

7. This order shall not be construed as authorizing the distribution of programming where the appropriate copyright clearances have not been obtained.

8. This order is issued under Section 0.291 of the Commission's Rules on Delegations of Authority and is subject to review under Section 1.115 of the Rules on Practice and Procedure. Review by the full Commission may be requested within 30 days of the date of public notice of this order (see Rule 1.4(b)(2)) by writing Secretary, Federal Communications Commission, Washington, DC 20554, stating the factors warranting consideration and, if mailed, should be sent by certified mail in time to be received by the due date.

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Acting Chief, International Facilities Division

FOOTNOTES

[1] RCA American Communications, Inc., File No. I-T-C-85-051, Mimeo No. 4381, released May 7, 1985.

[2] *See* Letter from James L. Buckley, Under Secretary of State for Security Assistance, Science and Technology, to Chairman Mark Fowler, dated July 23, 1981. *See also* Transborder Satellite Video Services, 88 F.C.C. 2d 258 (1981) (Transborder I); Eastern Microwave, Inc., I-P-C-81-049 *et al.*, Mimeo No. 2617, released March 1, 1983 (Transborder II); American Telephone & Telegraph Company, File Nos. I-P-C-82-048 *et al.*, Mimeo No. 6119, released Aug. 26, 1983 (Transborder III); Bonneville Satellite Corp., *et al.*, File Nos. I-T-C-83-148 *et al.*, Mimeo No. 1554, released Dec. 29, 1983 (Transborder IV); Western Union Telegraph Co., *et al.*, File Nos. I-T-C-83-068 *et al.*, Mimeo No. 3286, released April 4, 1984 (Transborder V); Eastern Microwave, Inc. *et al.*, File Nos. I-T-C-84-095 *et al.*, Mimeo No. 6425, released Sept. 11, 1984 (Transborder VI); Western Union Telegraph Co., *et al.*, File Nos., I-T-C-83-136 *et al.*, Mimeo No. 3643, released April 8, 1985 (Transborder VII); American Satellite Company *et al.*, File Nos. I-T-C-85-187 *et.al.*, Mimeo No. 7299, released Sept. 30, 1985 (Transborder VIII); RCA American Communications, Inc., *et al.*, File Nos., I-T-C-86-002 *et al.*, Mimeo No. 2578, released

Feb. 14, 1986 (Transborder IX); National Cable and Satellite Corp., *et al.*, File Nos. 417-DSE-ML-86 *et al.*, Mimeo No. 5220, released June 20, 1986 (Transborder X); American Telegraph & Telephone Company, *et al.*, File Nos. I-T-C-86-105 *et al.*, DA 86-26, released Oct. 9, 1986 (Transborder XI); and RCA American Communications, Inc., *et al.*, File Nos. I-T-C-86-175 *et al.*, DA 87-273, released March 23, 1987 (Transborder XII); GTE Spacenet, File Nos. I-T-C-86-103 *et. al.*, DA 87-444 released April 20, 1987 (Transborder XIII); Overseas Telecommunications, Inc. File Nos. I-T-C-87-106 *et. al.*, DA 87-1173 released September 4, 1987 (Transborder XIV); and U.S. Satellite Corporation, Inc., File Nos. I-T-C-87-166 *et.al.*, DA 87-1716 released December 4, 1987 (Transborder XV).

[3] Letter from Dean A. Olmstead, Office of Regulatory and Treaty Affairs, to Wendell R. Harris, Assistant Bureau Chief, Common Carrier Bureau, dated October 30, 1987.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

JOHN M. ROBERTS — File No. 54792-CL-P-199-A-86

For Authorization to Construct
a Cellular System in the
Steubenville-Weirton, OhioWest
Virginia MSA

ORDER

Adopted: January 12, 1988; Released: January 27, 1988

By the Commission:

1. The Commission has under consideration a Petition for Reconsideration, filed July 20, 1987 by McLang Company (McLang), of our June 19, 1987 *Public Notice* suspending the Commission's *ex parte* rules to enable the Commission to conduct a sensitive investigation concerning non-wireline cellular applications in twelve particular markets, including Steubenville-Weirton, OhioWest Virginia. [1]

2. McLang's application was selected as being second in the Steubenville-Weirton, OhioWest Virginia cellular market. Although McLang has not opposed any application in this proceeding, as a mutually exclusive applicant, McLang asserts that its due process rights will be adversely affected by the Commission's suspension of the *ex parte* rules. While McLang acknowledges that the Commission may modify the strictures of the *ex parte* rules in certain situations, it argues that it is "incomprehensible under any circumstances that an agency could simply suspend rules that guarantee the 'integrity' of its processes." [2] McLang contends that the Commission's action violates sections 308 and 309 of the Communications Act, 47 U.S.C. §§308 and 309, which prescribe public hearings, not *in camera* investigations, for selection of licensees. Thus, McLang urges the Commission to rescind its recent *Public Notice*, to make publicly available all *ex parte* communications that have been made in this proceeding, and to take related procedural steps.

DISCUSSION

3. The Commission has an obligation to ensure the integrity of its administrative processes. Where the Commission has reason to believe its processes may have been abused, the Commission has ample authority to investigate[3] and accord communications confidentiality in order to conduct its investigation.[4] Our *ex parte* rules expressly provide that the rules may be modified where the public interest so requires.[5] In fact, express provision is made under our *ex parte* rules for not applying the *ex parte* rules to oral communications from informal objectors where confidentiality is required in order to protect certain persons from possible reprisals.[6] In the instant case, the Commission launched an investigation into suspected abuses of its processes. Because of the sensitivity of the investigation, the Commission found it necessary temporarily to suspend the *ex parte* rules so as to allow for the submission of confidential oral and written communications during the course of the investigation. In this instance, the suspension of the *ex parte* rules was deemed essential to ensure the willingness of individuals to come forward with evidence without fear of reprisals, as well as to prevent premature disclosures which could hamper the Commission's ability to complete its investigation. [7] Suspension of the *ex parte* rules thus furthers the public interest by facilitating and expediting responses to Commission inquiries and ultimately enables the Commission to shape and control the scope of the investigation.

4. The Commission's suspension of its *ex parte* rules will remain in effect throughout the course of its investigation. The purpose of this investigation is to ascertain facts and adduce evidence. The investigation will not constitute a final disposition of the issues or an adjudication of any party's rights. [8] Generally, if the Commission is not inclined to order an adjudicatory hearing, all parties will be afforded ample opportunity, consistent with any obligation to protect confidential sources, to comment on or otherwise address the investigatory materials or the contents of any investigatory report in accordance with the statutory mandates of Sections 4(1), 308, 309 and 404 of the Communications Act. [9] *See Bilingual Bicultural Coalition of Mass Media, Inc. v. FCC, supra.* [10] The Commission will then make a final determination whether a hearing is required. If, after the investigation, the Commission does designate the application for hearing, an opportunity to address any aspects of the investigation that are submitted for the record will of course be provided to parties to the hearing.

5. Accordingly, IT IS ORDERED that the Petition for Reconsideration, filed by the McLang Company, is hereby DENIED.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster, III
Acting Secretary

FOOTNOTES

[1] The investigation was recently referred to the Criminal Division of the Justice Department for possible investigation. Public Notice, Report No. C1-88-4, Oct. 6, 1987.

[2] McLang Petition for Reconsideration at paras. 8 and 10.

[3] *See* 47 U.S.C. § 308(b) which states in pertinent part:

> The Commission, at any time after the filing of such original application and during the term of any such licenses, may require from an applicant or licensee further written statements of fact to enable it to determine whether such original application should be granted or denied or such license revoked.

See also 47 U.S.C. § 403 which states in pertinent part:

> The Commission shall have full authority and power at any time to institute an inquiry, on its own motion . . . concerning any question which may arise under any of the provisions of this Act, or relating to the enforcement of any of the provisions of this Act . . . .

See also Bilingual Bicultural Coalition of Mass Media, Inc. v. FCC, 595 F.2d 621,630 (D.C. Cir. 1978).

[4] *See* 5 U.S.C. § 552(b)(7)(A). Section 552(b)(7)(A) of the Freedom of Information Act exempts from mandatory disclosure investigatory records compiled for law enforcement purposes, where disclosure would hamper the agency's ability to conduct its investigation. *See also NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214 (1972); *J. P. Stevens & Co. v. Perry*, 710 F.2d 136 (4th Cir. 1983); *Goldschmidt v. U.S. Department of Agriculture*, 557 F. Supp. 274 (D.D.C. 1983); *Ehringhaus v. FTC*, 525 F. Supp. 21 (D.D.C. 1980).

[5] 47 C.F.R. § 1.1200(a).

[6] 47 C.F.R. § 1.1204(a)(3) Note.

[7] If we did not have the authority to exempt information obtained in the course of an investigation, an anomaly would exist between that part of our *ex parte* rules requiring service of information on the other parties and the statutory provisions of the Freedom of Information Act which exempt from mandatory disclosure investigatory records compiled for law enforcement purposes. Indeed, the Commission recently revised its *ex parte* rules to make this clear. *See Memorandum Opinion and Order*, Gen. Docket No. 86-225, FCC 87-303, released Oct. 7, 1987. *See* 47 C.F.R. §1.1204(b)(1).

[8] *PTL of Heritage Village Church & Missionary Fellowship, Inc.*, 71 FCC 2d 324 (1979); *Payola Inquiry*, 68 FCC 2d 1214 (1978); *Service Electric Cable TV, Inc.*, 67 FCC 2d 1563 (1978).

[9] For certain investigations, we "retain some prosecutorial discretion simply to drop the matter rather than allow for notice and comment." *Amendment of Subpart H, Part 1 of the Commission's Rules and Regulations*, FCC 87-303, released Oct. 7, 1987. It is premature at this point to consider whether this proceeding will be an appropriate one for us to exercise our discretion in this regard.

[10] *See also Oil Shale Broadcasting Co.*, 68 FCC 2d 517, 526-27 (1978).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-13

In the Matter of

Amendment of Part 74 of the
Commission's Rules Concerning
FM Booster Stations and
Television Booster Stations

ORDER

Adopted: December 15, 1987; Released: January 28, 1988

By the Chief, Mass Media Bureau

1. The *Report and Order* in the above-captioned proceeding, adopted July 16, 1987, 2 FCC Rcd 4625, amended the rules to authorize high power FM booster facilities and establish a TV booster service. This *Order* corrects several inadvertent errors in the revised rules adopted in this decision. As described below, this action: (1) corrects an error in Section 73.3572 of the revised rules as set forth in Appendix B of the *Report and Order;* (2) corrects errors in the texts of Sections 73.3536 and 74.501 of the rules of this decision and its summary as published in the Federal Register (52 FR 31398, August 20, 1987); (3) clarifies the intent of paragraph 52 of the text of that decision concerning interference caused by a TV booster to its primary station and revises the related rule, Section 74.703, accordingly; and (4) clarifies our intent with respect to operation of boosters by short spaced adjacent channel FM stations and revises the relevant rule, Section 74.1235, accordingly.

2. Section 73.3572 is corrected to insert the designation of paragraph (a)(2), omitted from the *Report and Order* as released by the Commission, but which appeared correctly in the summary of that decision published in the Federal Register. Amended Section 73.3572(a) reads as follows:

§ 73.3572 Processing of TV broadcast, low power TV, TV translator and TV booster station applications.

(a) Applications for TV stations are divided into two groups:

(1) In the first group are applications for new stations or major changes in the facilities of authorized stations. A major change for TV broadcast stations authorized under this part is any change in frequency or community of license which is in accord with a present allotment contained in the Table of Allotments (Section 73.606). Other requests for change in frequency or community of license for TV broadcast stations must first be submitted in the form of a petition for rule making to amend the Table of Allotments. In the case of low power TV, TV translator, and TV booster stations authorized under Part 74 of this chapter, a major change is any change in:

(i) Frequency (output channel) assignment (does not apply to TV boosters);

(ii) Transmitting antenna system including the direction of the radiation, directive antenna pattern or transmission line;

(iii) Antenna height;

(iv) Antenna location exceeding 200 meters; or

(v) Authorized operating power.

(2) However, if the proposed modification of facilities, other than a change in frequency, will not increase the signal range of the low power TV, TV translator or TV booster station in any horizontal direction, the modification will not be considered a major change. Provided, that in the case of an authorized low power TV, TV translator or TV booster station which is predicted to cause or receive interference to or from an authorized TV broadcast station pursuant to Section 74.705 or interferes with broadcast or other services under Sections 74.703 or 74.709, that an application for a change in output channel, together with technical modifications which are necessary to avoid interference (including a change in antenna location of less than 16.1 km), will not be considered as an application for a major change in those facilities. Provided further, that the FCC may, within 15 days after the acceptance of any other application for modification of facilities, advise the applicant that such application is considered to be one for a major change and therefore subject to the provisions of Sections 73.3580 and 1.1111 pertaining to major changes.

* * * * *

3. Section 73.3536 is corrected to indicate that it is paragraph (b)(5) that is revised, and not paragraph (a)(5) as stated in Appendix B of the *Report and Order*. Further, the text of Section 74.501 is incorrect. The corrected text appears in the attached appendix.

4. Paragraph 28 of the *Report and Order*, discussing FM booster stations, contains the following statement: "We also believe it is necessary to ensure that service is provided to the principal community the primary station is licensed to serve. Accordingly, we will require that boosters not cause interference to the signal provided by the primary station within the boundaries of the principal community to be served." This same policy statement should have been included in paragraph 52 relating to TV boosters, but was inadvertently omitted.

5. In conjunction with the above, Section 74.703 is corrected by adding the following sentence to paragraph (b) and adding new paragraph (g) to read as follows:

§ 74.703 Interference.

* * * * *

(b) . . . TV booster stations will be exempt from the provisions of this paragraph to the extent that they may cause limited interference to their primary stations' signal subject to the conditions of paragraph (g) of this section.

* * * * *

(g) A TV booster station may not disrupt the existing service of its primary station nor may it cause interference to the signal provided by the primary station within the boundaries of the principal community to be served.

6. Paragraph 27 of the *Report and Order* addresses co-channel interference by boosters and the operation of boosters by short spaced stations. The provisions regarding short spaced operation apply to both co- channel and first adjacent channel situations. Thus, paragraph 29 should have included the following:

> We also find that there is no need for special provisions where boosters are operated by short spaced FM stations. Boosters operating under the provisions of the above rules are not expected to add to the interference already resulting from the short spaced operation. On this basis, we will permit short spaced stations to use boosters to serve areas within the stations' predicted service area in the same manner as stations that meet the normal separation distance requirement. Of course, the requirement that the ratio of the signal of the adjacent channel station to the signal of the booster be at least 6 dB would apply only to the area within the predicted interference free service contour of the adjacent channel station.

7. We also are correcting Section 74.1235 of our rules to reflect the above language concerning operation of boosters by short spaced FM stations on adjacent channels. Section 74.1235 is revised by adding the following text at the end of the last sentence of paragraph (c) to read as follows:

§ 74.1235 Power limitations.

* * * * *

(c) . . . except that in the case of FM stations on adjacent channels at spacings that do not meet the minimums specified in Section 73.207, the signal of any such first adjacent channel station must exceed the signal of the booster by 6 dB at any point within the predicted interference free contour of the adjacent channel station.

8. No substantive changes are made herein which alter our policy decisions adopted in the *Report and Order* or impose additional burdens on licensees or the public. We conclude, for the reasons set forth above, that these revisions will serve the public interest.

9. These amendments are implemented by authority delegated by the Commission to the Chief, Mass Media Bureau. Inasmuch as these amendments impose no additional burdens and raise no issue upon which comments would serve any useful purpose, prior notice of rule making, effective date provisions, and public procedure thereon are unnecessary pursuant to the Administrative Procedure and Judicial Review Act provisions 5 U.S.C. 553(b)(3)(B).

10. Since a general notice of proposed rule making is not required, the Regulatory Flexibility Act does not apply.

11. Therefore, IT IS ORDERED that pursuant to Section 4(i), 303(r) and 5(c)(1) of the Communications Act of 1934, as amended, and Sections 0.61 and 0.283 of the Commission's Rules, Parts 73 and 74 of the FCC Rules and Regulations ARE AMENDED as set forth in the Appendix below, effective **March 3, 1988.**

12. For futher information on this *Order*, contact Marcia Glauberman, Mass Media Bureau, (202) 632-6302.

FEDERAL COMMUNICATIONS COMMISSION

Alex D. Felker
Chief, Mass Media Bureau

APPENDIX

Parts 73 and 74 of Title 47 of the Code of Federal Regulations are amended to read as follows:

1. The authority citations for Part 73 and 74 continue to read as follows:

Authority: 47 U.S.C. 154 and 303.

2. Section 73.3536 is amended by removing paragraph (a)(5) and revising paragraph (b)(5) to read as follows:

§ 73.3536 Application for license to cover construction permit.

(a) The application for station license shall be filed by the permittee pursuant to the requirements of § 73.1620 Program tests.

(b) * * *

* * * * *

(5) FCC Form 347, "Application for a Low Power TV, TV Translator, TV Booster, or FM Translator Station License."

* * * * *

3. Section 74.501 is amended by revising paragraphs (a) and (b) to read as follows:

§ 74.501 Classes of aural broadcast auxiliary stations.

(a) *Aural broadcast STL station.* A fixed station for the transmission of aural program material between the studio and the transmitter of a broadcasting station other than an international broadcasting station.

(b) *Aural broadcast intercity relay (ICR) station.* A fixed station for the transmission of aural program material between broadcasting stations other than international broadcasting stations, and between FM radio broadcast stations and their co-owned FM booster stations, or other purposes as authorized in § 74.531.

* * * * *

4. Section 74.703 is amended by revising paragraph (b) and adding paragraph (g) to read as follows:

§ 74.703 Interference.

* * * * *

(b) It shall be the responsibility of the licensee of a low power TV, TV translator, or TV booster station to correct at its expense any condition of interference to the direct reception of the signal of any other TV broadcast station operating on the same channel as that used by the low power TV, TV translator, or TV booster station or an adjacent channel which occurs as a result of the operation of the low power TV, TV translator, or TV booster station. Interference will be considered to occur whenever reception of a regularly used signal is impaired by the signals radiated by the low power TV, TV translator, or TV booster station, regardless of the quality of the reception or the strength of the signal so used. If the interference cannot be promptly eliminated by the application of suitable techniques, operation of the offending low power TV, TV translator, or TV booster station shall be suspended and shall not be resumed until the interference has been eliminated. If the complainant refuses to permit the low power TV, TV translator, or TV booster station to apply remedial techniques that demonstrably will eliminate the interference without impairment of the original reception, the licensee of the low power TV, TV translator, or TV booster station is absolved of further responsibility. TV booster stations will be exempt from the provisions of this paragraph to the extent that they may cause limited interference to their primary stations' signal subject to the conditions of paragraph (g) of this section.

* * * * *

(g) A TV booster station may not disrupt the existing service of its primary station nor may it cause interference to the signal provided by the primary station within the principal community to be served. 5. Section 74.1235 is amended by revising paragraph (c) to read as follows:

§ 74.1235 Power limitations.

* * * * *

(c) The output power of FM booster stations shall be limited such that the predicted service contour of such stations, computed in accordance with Section 73.313(a)-(d), may not extend beyond the area covered by the predicted service contour of the primary station that they rebroadcast and that such output power may not exceed 20 percent of the maximum allowable effective radiated power for the primary station's class. Further, FM booster stations shall be subject to the requirement that the signal of any first adjacent channel station must exceed the signal of the booster station by 6 dB at all points within the protected contour of any first adjacent channel station, except that in the case of FM stations on adjacent channels at spacings that do not meet the minimums specified in Section 73.207, the signal of any such first adjacent channel station must exceed the signal of the booster by 6 dB at any point within the predicted interference free contour of the adjacent channel station.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-619

In the Matter of

Amendment of Section 73.202(b),	RM-5907
Table of Allotments,	RM-6132
FM Broadcast Stations.	
(Gosnell and Osceola, Arkansas)	

NOTICE OF PROPOSED RULE MAKING

Adopted: December 24, 1987; Released: January 28, 1988

By the Chief, Allocations Branch:

1. The Commission considers herein two separately-filed petitions for rule making. The first, filed by Earl N. Hodges (Hodges), dba Mid-South Frequency Monitoring Service, seeks the allotment of Channel 235A to Gosnell, Arkansas, as that community's first local FM service (RM-5907). The second proposal, filed by Clarence Medlin (Medlin), requests the allotment of Channel 235A to Osceola, Arkansas, as that community's second local FM service. Each petitioner expressed an intention to apply for the channel if it is ultimately allotted to their respective community.

2. A staff engineering study reveals that Channel 235A can be allotted to Gosnell (population 3,215)[1] or to Osceola (population 8,881), each in Mississippi County (population 59,517), in conformity with the minimum distance separation requirements specified in Section 73.207(b) of the Commission's Rules. Channel 235A cannot be allotted to both communities, however, since they are separated by a distance of 28.3 kilometers, whereas a minimum range of 105 kilometers (65 miles) is required between co-channel Class A allotments. Therefore, the proposals must be comparatively considered. Consequently, we shall provide each proponent an opportunity to demonstrate in comments herein why its community should be preferred. In this regard, the parties should be guided by the allocation criteria set forth in *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982). Additionally, the proponents may wish to determine if other channels may be available to resolve the existing conflict.

3. In consideration of the above, the Commission seeks comments on the optional proposals to allot Channel 235A to either Gosnell or Osceola, Arkansas, as a first or second FM service, respectively. Accordingly, the Commission proposes to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, as follows:

	Channel No.	
City	Present	Proposed
Gosnell, Arkansas	–	235A
	or	
Osceola, Arkansas	251C1	235A,251C1

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **March 21, 1988,** and reply comments on or before **April 5, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, as follows:

Earl N. Hodges dba Mid-South Frequency Monitoring Service 4004 Clay Drive Jonesboro, AR 72401 (Petitioner - Gosnell, AR)	Clarence Medlin 42 Jackson Street Wilson, AR 72395 (Petitioner - Osceola, AR)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Mark N. Lipp
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND

[1] Po

the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

FOOTNOTE

[1] Population figures were taken from the 1980 U.S. Census.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-620

In the Matter of

Amendment of Section 73.202(b), RM-6098
Table of Allotments,
FM Broadcast Stations.
(Deer Park, Washington)

NOTICE OF PROPOSED RULE MAKING

Adopted: December 24, 1987; Released: January 28, 1988

By the Chief, Allocations Branch:

1. The Commission has before it for consideration a petition for rule making filed by Barbara L. Kazmark (petitioner), licensee of Station KAZZ(FM), Channel 296A, Deer Park, Washington, seeking the substitution of Class C2 Channel 296 for Channel 296A at Deer Park and modification of the station license to specify operation on the higher class co-channel. Petitioner has expressed a willingness to relocate Station KAZZ's current transmitter site in order to provide Deer Park with its first wide coverage area FM station.

2. Channel 296C2 can be allocated to Deer Park in compliance with the Commission's minimum distance separation requirements with a site restriction of 25.8 kilometers (16.0 miles) northeast of the community.[1] The restriction is necessary in order to avoid short spacings to Station KMOK(FM), Channel 295C, Lewiston, Idaho and a vacant Canadian allotment, Channel 297A, at Grand Fork, British Columbia.

3. Since Deer Park is located within 320 kilometers (200 miles) of the common U.S.-Canadian border, concurrence must be obtained from the Canadian government. We shall also seek a specially negotiated short-spaced allotment due to a 15 kilometer short spacing to Channel 295B (vacant) at Nelson, British Columbia, Canada.

4. As requested, we shall propose to modify the license of Station KAZZ(FM) to specify operation on the higher class co-channel, Channel 296C2. In accordance with Section 1.420(g) of the Commission's Rules we shall not accept competing expressions of interest nor require that the petitioner demonstrate the availability of an additional equivalent channel.

5. We believe the public interest would be served by proposing the substitution at Deer Park, since it could provide that community with its first wide coverage area FM service. Accordingly, the Commission proposes to amend the FM Table of Allotments, Section 73.202(b) of the Rules, with regard to the following community:

City	Channel No. Present	Proposed
Deer Park, Washington	296A	296C2

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before **March 21, 1988,** and reply comments on or before **April 5, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Barbara L. Kazmark
P. O. Box 1369
Deer Park, Washington 99006

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Mark N. Lipp
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the

Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

FOOTNOTE

[1] The coordinates for this site are: 48-08-35 and 117-15-59.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-618

In the Matter of

Amendment of Section 73.202(b), RM-6133
Table of Allotments,
FM Broadcast Stations.
(Fort Rucker, Alabama)

NOTICE OF PROPOSED RULE MAKING

Adopted: December 24, 1987; Released: January 28, 1988

By the Chief, Allocations Branch:

1. Before the Commission for consideration is the petition for rule making filed by the United States Army Aviation Center (petitioner), located at Fort Rucker, Alabama, seeking the deletion of FM Channel 226A at that location.[1]

2. Petitioner advises that it only recently learned of the Channel 226A allotment at Fort Rucker, and that had it been aware of the Commission's intention to allot the channel earlier, it would have requested its denial during the comment period afforded in MM Docket No. 84-231.

3. Petitioner advises that Fort Rucker is not an incorporated city with municipal services but a military installation. As a result, it premises its proposal on alleged serious air hazards which Channel 226A would create to its training activities. Specifically, petitioner advises that Fort Rucker is a basic training facility for all of the U.S. Army's rotary and fixed wing aircraft personnel. Therefore, petitioner asserts it is imperative that the safety of its trainees is assured during that hazardous period. Petitioner claims that approximately "90% of local to similar aircraft instruction is conducted at Fort Rucker." As a result of these combined activities, petitioner states that over four million flight operations occur yearly. Furthermore, petitioner advises that present training activities within a nine mile radius of the base involve an average of 1,486 flights daily. In addition to the protected airspace required for its operation, petitioner advises that it must co-exist with private and municipal airport facilities in the area. Petitioner urges that if Channel 226A is permitted to remain, existing air corridors would have to be changed, thus affecting civilian air traffic in this limited area.

4. Although an antenna height of 100 meters would be required to accommodate Channel 226A, petitioner advises that any obstruction greater than 15.24 meters within seven miles of the base would have a devastating effect on its present operation. According to petitioner's engineering study, due to aeronautical constraints and limitations, there is no available site off-base which could provide a 70 dBu signal to Fort Rucker, without interfering with the air space of municipal and private aeronautical facilities in the surrounding area.

5. In accordance with established Commission policy, we will not routinely entertain a proposed Docket 84-231 channel deletion absent a compelling showing of need or Commission error.[2] However, on the basis of the information presented by petitioner, we believe it has set forth justification for its proposal.

6. In view of the above, the Commission considers it appropriate to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, as follows:

City	Channel No. Present	Proposed
Fort Rucker, Alabama	226A	–

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

8. Interested parties may file comments on or before **March 21, 1988,** and reply comments on or before **April 5, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, as follows:

Department of the Army
United States Army Aviation Center
Attn: Colonel James B. Sauer
Fort Rucker, Alabama 36362-5000

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

11. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Mark N. Lipp
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

FOOTNOTES

[1] Channel 226A was allotted to Fort Rucker, Alabama in MM Docket No. 84-231, and was the 57th channel selected, for which applications may ultimately be accepted.

[2] *See* , Memorandum Opinion and Order, 50 FR 47391, November 18, 1985.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-617

In the Matter of

Amendment of Section 73.202(b), RM-6087
Table of Allotments,
FM Broadcast Stations.
(Lufkin, Texas)

NOTICE OF PROPOSED RULE MAKING

Adopted: December 21, 1987; Released: January 28, 1988

By the Chief, Allocations Branch:

1. The Commission has before it for consideration a petition for rule making filed by Darrell E. Yates, (petitioner) licensee of Station KUEZ(FM), Channel 257A at Lufkin, Texas, seeking the substitution of FM Channel 257C2 for Channel 257A and modification of his license to specify operation on the higher class co-channel. Petitioner submits information in support of the proposal to provide a second wide coverage area FM station at Lufkin.

2. The channel substitution can be made in compliance with the Commission's minimum spacing requirements with a site restriction of 12.9 kilometers (8.0 miles) northwest of Lufkin.[1] The site restriction is necessary in order to avoid a short spacing to an application (BPH870212IC) for Station KHLA(FM), Lake Charles, Louisiana. Petitioner indicates a willingness to relocate the station's current transmitter site.

3. As requested, we shall propose to modify the license of Station KUEZ(FM) to specify operation on the higher class co-channel, Channel 257C2. In accordance with Section 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest nor require that the petitioner demonstrate the availability of an additional equivalent channel at Lufkin.

4. In view of the fact that Lufkin, Texas could receive its second wide coverage area FM channel the Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

	Channel No.	
City	Present	Proposed
Lufkin, Texas	257A, 286C	257C2, 286C

5. IT IS ORDERED, That the Secretary of the Commission SHALL SEND, by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a copy of this *Notice* to the following: Broadco of Texas, Incorporated, P.O. Box 7953, Lawton, OK 73506.

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before **March 21, 1988,** and reply comments on or before **April 5, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Lee J. Peltzman, Esquire
Baraff, Koerner, Olender & Hochberg, P. C.
2033 M Street, N.W.
Suite 203
Washington, D. C. 20036-3355
(Counsel for petitioner)

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Mark N. Lipp
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND

the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

FOOTNOTE

[1] The spacing requirements are met to Station KEYP-FM (Channel 257A) at Whitehouse, Texas based on the authorization to operate on Channel 297C2 in lieu of Channel 257A (MM Docket No. 86-220). A copy of this Not ic e will be served on Station KEYP-FM notifying it of this proposed change in the class of channel at Lufkin.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-616

In the Matter of

Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Emporia, Kansas) — RM-6075

NOTICE OF PROPOSED RULE MAKING

Adopted: December 22, 1987; Released: January 28, 1988

By the Chief, Allocations Branch:

1. At the request of Emporia Broadcasting (petitioner), the Commission has before it a petition for rule making proposing the allotment of Channel 241A to Emporia, Kansas, as that community's third FM channel. Petitioner has furnished information in support of the proposal and stated its intention to apply for the channel, if allotted. The channel can be allocated consistent with the Commission's minimum separation requirements.

2. In view of the fact that the proposed allocation could provide a third FM service to Emporia, Kansas, the Commission believes it is appropriate to propose amending the FM Table of Allotments, Section 73.202(b) of the Commission's Rules with regard to the following community:

	Channel No.	
City	Present	Proposed
Emporia, Kansas	269A, 285A	241A, 269A 285A

3. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

4. Interested parties may file comments on or before **March 21, 1988,** and reply comments on or before **April 5, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Stanley G. Emert, Jr., Esq.
Watson, Erickson & Emert
2108 Plaza Tower
Post Office Box 131
Knoxville, TN 37901
(Counsel to Petitioner)

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

6. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Mark N. Lipp
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

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(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

PROGRESSIVE COMMUNICATIONS Temple, Texas	**MM Docket No. 84-352** File No. BPH-820512AP
Mary McFaddin Pyle, dba MARYMC BROADCASTING CO. Temple, Texas	**MM DOCKET NO. 84-354** File No BPH-820524BB
BELL COUNTY BROADCASTING COMPANY Temple, Texas	**MM DOCKET NO. 84-355** File No. BPH-820524BJ

For Construction Permit
for a New FM Station

Appearances

Herbert D. Miller, on behalf of Progressive Communications, Inc.; *Robert W. Healy*, on behalf of Mary McFaddin Pyle, dba MaryMc Broadcasting Co.; *Roy F. Perkins*, on behalf of Bell County Broadcasting Company; and *Paulette Laden*, on behalf of Chief, Mass Media Bureau, Federal Communications Commission.

SUPPLEMENTAL INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE JOHN M. FRYSIAK

Issued: December 22, 1987; Released: January 28, 1988

PRELIMINARY STATEMENT

1. Three-parties applicant who are mutually exclusive are involved in this proceeding: Progressive Communications, Inc. (Progressive); Mary McFaddin Pyle, dba MaryMc Broadcasting Company (MaryMc); and Bell County Broadcasting Company (Bell County). This phase of the proceeding follows remand by the Review Board, *Memorandum Opinion and Order*, (FCC 86R-36, released June 2, 1986). The Remand Memorandum Opinion and Order added the following issue:

> To determine whether MaryMc Broadcasting Company had reasonable assurance of the availability of a transmitter site during the period December 1982 to September 1985.

2. The Remand Memorandum Opinion and Order also referred the outstanding Petition for Leave to Amend filed by MaryMc on November 18, 1985:

> * * * for consideration after the resolution of the site issue. At that point he {the Presiding Officer} will be in a better position to decide whether good cause has been shown for the proposed Amendment.

3. In addition, the Remand Memorandum Opinion and Order directed that evidence be taken, findings be made and conclusions be reached concerning aspects of the integration proposals of Bell County and Progressive.

4. A prehearing conference was held in this proceeding on June 30, 1986. A hearing session on the remanded issues was held on December 2 and 3, 1986. During the remand hearing, Motions to Enlarge Issues were filed by both Progressive and MaryMc. By *Order*, FCC 87M-121, released January 20, 1987 the following qualifying issues were added:

> To determine whether at the time when Bell County Broadcasting Company filed its application it was financially qualified to construct and operate its proposed radio station;
>
> To determine whether between the date its application was filed and the close of the record in the present remand proceeding Bell County Broadcasting Company was financially qualified to construct and operate its proposed radio station;
>
> To determine whether Bell County falsely certified that it was financially qualified to construct and operate its proposed radio station;
>
> To determine whether Bell County was lacking in candor or misrepresented material facts in contending that 'None of the financing for preparation and prosecution of the application of Bell County, or construction and operation of its station at Temple, Texas, have come or will come from individual assets of my husband, William A. Watts'; and
>
> To determine, in light of the foregoing, whether Bell County is qualified to become a Commission licensee.

5. An admissions session was held on April 6, 1987 and all questions concerning the admissibility of Bell County's exhibits regarding the added issues were resolved. Following MaryMc's and Progressive's waiver of their respective right to cross-examine Bell County sponsoring witnesses, the record was closed by *Order* (FCC 87M-812, released April 14, 1987).

FINDINGS OF FACT

Site Availability - MaryMc

6. Scott and White Hospital is a large medical complex (MaryMc Remand Ex. 3, p. 14). The hospital is a part of the Texas A&M University College of Medicine (*Id.* at 15). It is the tallest structure in the area and sits on the highest ground elevation in Bell County (*Id.* at 17).

7. The Scott and White Hospital Foundation Board of Trustees had developed a policy of permitting this site to be used for communications facilities, as a form of service

to the community (MaryMc Remand Ex. 1, p. 4, Ex. 2, p. 8, Ex. 3, pp. 18-19). The Board had permitted a Waco, Texas television station to put a booster on the hospital roof and had made it available for use by local ham radio operators (MaryMc Remand Ex. 3, pp. 18- 19).

8. Mr. Jamie Clements, an attorney, is employed full time by Scott and White Hospital, in Temple, Texas as its general counsel. Formerly, he was the Mayor of Temple (*Id.* at 6). Sometime prior to November 18, 1981, Mr. Clements was approached by Progressive principal Lynn Woolley, who sought permission to use the roof of a Scott and White building as Progressive's transmitter site (*Id.*).

9. Mr. Clements agreed to look into the matter. After Scott and White's engineer found the Progressive proposal to be unobjectionable, Mr. Clements approached Dr. Richard Haines, President of the hospital's Board of Trustees, with the Progressive proposal (*Id.* at pp. 6-8). Thereafter, Dr. Haines directed Mr. Clements to write a letter to Mr. Woolley authorizing Progressive to use the hospital roof as its antenna site (*Id.* at 9). The letter authorizing the use of the hospital roof was dated September 18, 1981 and provided for a monthly rental fee of50 (MaryMc Ex. 3A). It also stipulated that the transmitter and tower be removed from the Scott and White premises upon notice from the Foundation. The letter stated that removal would not be requested except for some unforeseen circumstance where "construction of new facilities andor some interference with the operation of the hospital would create a problem." (*Id.*).

10. At the time when Scott and White had granted Progressive permission to use its roof as a transmitter site, no application had been filed with the Commission by any party for authority to construct on the present frequency in Temple (MaryMc Remand Ex. l).

11. The MaryMc application, as filed on May 24, 1982, specified a transmitter site at a bank in Temple. That site became unavailable sometime prior to December, 1982 (Tr. 475).

12. On November 30, 1982, Mary Pyle went to see Mr. Clements to seek permission to use the Scott and White site (MaryMc Remand Ex. 3, p. 25). The meeting had been suggested to Ms. Pyle by Mr. Jerry Pickle, the assistant general counsel of Scott and White (MaryMc Remand Ex. 4, p. 21). Prior to the meeting with Mr. Clements, Ms. Pyle had discussed the requirements of having reasonable assurance of site availability with her communications counsel and believed that she understood that requirement (Tr. 479).

13. During the meeting with Mr. Clements, Ms. Pyle was told that the hospital had already made a written commitment to Progressive (MaryMc Remand Ex. 1, p. 4). Ms. Pyle in turn advised Mr. Clements that only one applicant would receive a construction permit to build the station and that Progressive, if it lost, obviously would not be in a position to use the hospital site (*Id.*).

14. Mr. Clements advised Ms. Pyle that only the Board of Trustees had decision-making authority and that he could not speak for them (*Id.*). He encouraged her to make her request to the president of the Board of Trustees, Dr. Haines Brindley (*Id.*). He also noted what the rental terms would be, namely, a nominal rental fee of50 per month for the use of the facility, including access to the hospital's auxiliary power source and a commitment by the tenant that the hospital would receive public service announcements and other programming describing the services of Scott and White (*Id.*).

15. Ms. Pyle wrote to Dr. Brindley on December 2, 1982, seeking permission to use the hospital site (*Id.* at p. 5). At the hearing Ms. Pyle testified that she phrased the letter in terms that she would assume the hospital's consent unless she heard from the Board to the contrary (*Id.*). Ms. Pyle amended her application on December 15, 1982 to reflect the change of her transmitter site to the hospital site (*Id.*). At that point she had not as yet received any response from Dr. Brindley or the Board (*Id.*).

16. In point of fact the December 2 letter to Mr. Brindley made no reference to Ms. Pyle's assuming consent unless hearing to the contrary. The letter did note that Ms. Pyle would like to use the hospital site and that the hospital's commitment to Progressive would not conflict with her proposal because only one party can be successful in the FCC proceeding. Ms. Pyle closed the letter stating that if what she proposed to the Board was agreeable, she would need to amend her FCC application and that she would await the hospital's response (Progressive Remand Ex. 4).

17. In the months following the filing of the December 15, 1982 amendment, Ms. Pyle did check periodically with Mr. Jerry Pickle about the status of her request (MaryMc Remand Ex. l, p. 5). On May 5, 1984 Ms. Pyle met with Mr. Pickle and the new president of the Board of Trustees, Dr. Robert Myers. The purpose of the meeting was to bring Dr. Meyers up to date on her proposed plans for the use of the hospital site (*Id.*). The following day Ms. Pyle was advised by letter from Mr. Pickle that the hospital Board of Trustees had not yet acted on her request (*Id.*). At that point Ms. Pyle had her own attorney make further inquiry and he was advised by a letter from Mr. Pickle dated May 31, 1984 that the hospital would approve no further requests for antenna locations (*Id.*). Mr. Pickle also stated that the Executive Committee was aware that it already granted approval to one of the applicants but that it also desires that "any of the applicants be given an opportunity to discuss placement of an antenna, depending upon which of the applicants is approved * * *." (MaryMc Remand Ex. 4-A).

18. In a letter dated November 1, 1984 and addressed to Mr. Michael G. Steinheimer, husband of Bell County's principal Ms. Judy Morales Steinheimer, Mr. Pickle stated that Scott and White was not committed to any applicant other than Progressive and that no action was taken on MaryMc's request. The letter intimated that should Progressive not be successful in obtaining a construction permit the hospital would be willing to discuss with any successful applicant the placement of an antenna on its roof, but that its willingness to discuss should not be construed as a willingness to lease (MaryMc Remand Ex. 4-B). A copy of this letter was filed by Bell County in this proceeding on December 3, 1984.

19. The record does not indicate any further happenings relative to the Scott and White Hospital site until after the release of the *Initial Decision* herein. By letter dated September 25, 1985, Mr. Joe M. Dickinson, Administrator of the Scott and White Hospital, advised Ms. Pyle that for technical reasons neither she nor anyone else would be allowed to install FM transmitting equipment on the hospital roof (Progressive Remand Ex. 7). The letter from Mr. Dickinson to Ms. Pyle followed a telephone conversation between the two initiated by Mr. Dickinson in response to

a report in a local newspaper that MaryMc's transmitter would be located on the hospital roof and he being unaware of any grant of permission to her from the hospital (Tr. 554- 555).

Financial Qualifications - Bell County as of May 24, 1982

20. Bell County Broadcasting Co. was incorporated in Texas on April 26, 1982 by William A. Watts as the incorporator and sole director. Bell County filed its broadcast application on May 24, 1982. It stated in its application that William A. Watts would be president, treasurer, a director and 49 percent stockholder. Teresa Watts was to be vice-president, secretary, a director and 51 percent stockholder. The officers and directors, as proposed in the application, were appointed by organizational resolutions adopted June 8, 1982 (Bell County Remand Ex. 1, pp. 4-5).

21. At the time of filing its application, Bell County's estimate of construction and three month operation was57,531.15 (Bell County Remand Ex. 3, Attachment A). This sum was exclusive of legal and engineering fees, totaling21,000 (*Id.*). Of the57,531.15 construction and operation costs, 4,000 was to be provided by Teresa and Will Watts (*Id.*). The balance was to come from William Wade Watts, William A.'s father. However, there is no proof on the record of any written loan or other agreement between Bell County or its principals and William Wade Watts existing as of May 24, 1982 (Tr. 712, 799, 811). Although Mr. Wade Watts' balance sheet lists property held jointly with Evelyn Watts and by her alone, there is no indication that Mrs. Evelyn Watts, the spouse of Wade Watts, had agreed to liquidate any of her assets to allow Mr. Watts to make a loan.

22. The legal and engineering fees of21,000 were to be paid by Mr. and Mrs. Watts from established income until the Houston property was sold or second mortgage obtain on the house or condominium (Bell County Remand Ex. 3, Attachment A). However, no proof has been submitted as to the adequacy of "established income" to meet these costs or as to the value of the house and condominium. However, Mr. Wade Watts had agreed to advance additional funds for these expenses. Again, no written commitment from Mr. Wade Watts to this effect existed as of May 24, 1982.

Bell County's Present Financial Qualifications

23. In September of 1982 Bell County underwent a reorganization whereby Mr. William A. Watts dropped out, Mrs. Watts became a 66-23 percent shareholder, president, treasurer, secretary and director and Mrs. Judy Morales Steinheimer became a 33-13 percent shareholder, vice-president and director (Bell County Remand Ex. 1, p. 5; Bell County Remand Ex. 2, p. 2).

24. In 1987 Bell County altered its financial posture. Bell County's present financial proposal contemplates a requirement for150,155 in cash to construct and operate the proposed station for three months, exclusive of outstanding legal fees which are to be paid at the rate of 1,300 per month from the established income of the Teresa Watts' and Judy Morales Steinheimer's families (Bell County Remand Ex. 6, Attachment A). There is no record evidence that indicates Judy Morales Steinheimer's capability to meet her share of legal fees and although the record reflects that Mr. and Mrs. Watts have cash in the amount of11,500 (Bell County Remand Ex. 6, Attachment C) and had an annual income in 1986 of over77,000 (Bell County Remand Ex. 7) there is no other indication whether their personal finances would permit payments of1,300 per month for legal fees.

25. The construction and operation costs of150,155 are to be covered by a cash loan of10,000 from William A. and Teresa L. Watts; a cash loan of25,000 from W. Wade Watts and the purchase of 5,000 shares of non- voting stock by Jean-Pierre Bleger in the amount of120,000 for a one-third equity interest in the applicant company (Bell County Remand Ex. 6).

26. To demonstrate their ability to make the10,000 loan to the company Mr. and Mrs. William A. Watts have supplied their balance sheet which shows cash on hand in the amount of11,500, and a total balance of2,400 in an IRA account and a SEP account (*Id.* Attachment C). There is no record evidence as to liquidity of the retirement accounts or to the accounts receivable listed in the balance sheet. Also, there is no indication to what extent, if any, any reliance is placed on savings to meet the legal costs mentioned above.

27. Although the balance sheet supplied by Mr. W. Wade Watts indicates sufficient resources to meet the25,000 loan commitment (*Id.* Attachment D), some of the assets appear to be jointly owned with Mrs. Wade Watts or owned by her outright and no indication has been given whether Mrs. Wade Watts has agreed to liquidate any of her assets for the purpose of the loan.

28. Mr. Jean-Pierre Bleger's balance sheet of June 30, 1986 shows cash on hand of128,000; accounts receivable in the amount of 82,000; stock in the amount of2,000 and miscellaneous items valued at30,000 (*Id.* Attachment F). However, no information was submitted substantiating the liquidity of the non-cash assets. The balance sheet also shows assets of real estate and a bakery business, but no evidence was presented demonstrating their marketability. According to the balance sheet, Mr. Bleger's annual income is275,998 or 22,999 93 per month. The balance sheet actually shows a computation of monthly income of52,999.83, but this is perceived to be in error. Mr. Bleger's monthly expenses are listed at 29,737 for a monthly deficit of6,737.17, or80,846.04 per year (*Id.*). Mr. Bleger's liabilities consist of a note payable to banks in the amount of65,000. Mr. Bleger also has real estate holdings in the aggregate amount of7,603,000 against which there are said to be mortgages in the amount of 3,472,000 (*Id.*). However, no information has been provided substantiating the estimate of value and no evidence has been presented indicating Mr. Bleger's willingness to sell any non-liquid assets or to use any non-liquid asset as collateral for a loan.

The Misrepresentation Lack of Candor

29. In her direct testimony, Teresa Watts stated that none of the financing for Bell County's prosecution of its application has come from the individual assets of her husband, William A. Watts (Bell County Remand Ex. 1, 10). During cross-examination Mrs. Watts testified that she paid her attorney with a check for4,000 drawn on her husband's money market account (Tr. 840-841).

30. The "Money Market Savings" account is with the MBank Greenway, Houston, Texas, under the name, "William A. Watts, 8515 Hatton Street, Houston and ac-

count number 060-992." The signature card bears the signatures of William A. Watts and Teresa L. Watts (Bell County Remand Ex. 8, p. 3).

31. Mr. Michael J. Steinheimer, an attorney practicing in the State of Texas, testified that, in his opinion, and, based on the fact that the funds in the money market account came from the earnings of William A. Watts, the funds in that account being earnings of a spouse during marriage are community property in which each spouse enjoys a community ownership interest; and that such funds are subject to the joint control of William and Teresa Watts and are in no sense the separate or individual assets of William A. Watts under Texas law (Bell County Remand Ex. 9).

The Bona Fides of Bell County's Integration Proposal

32. The original stockholders of Bell County were Teresa L. Watts (51 percent) and her husband, William A. Watts (49 percent) (Bell County Remand Ex. 1, pp. 3-4). This corporate structure was suggested by Bell County's FCC attorney so that Bell County would realize a more substantial female preference (Tr. 700), and so that Mr. Watts could withdraw from Bell County should that later prove to be beneficial from a comparative standpoint (Tr. 700; Tr. 773). Notwithstanding the fact that Mrs. Watts had majority control, it was intended that Mr. Watts be "the head of the company" (Tr. 700- 01) as well as the general manager of the proposed station (Tr. 699-701) so that it would appear to the community that a male was "the boss" (Tr. 701).

33. The Wattses' original plan was for both to move to Temple; that Mr. Watts would terminate his radio employment in Houston but continue to spend several days at a time there to meet his television contractual commitments until they could be phased out; that Mrs. Watts would work full time at the station in Temple and, if need be to make ends meet, would work part time doing private physical therapy (Bell County Remand Ex. 1, p. 3).

34. Prior to the "B" cut-off the Wattses were advised by their FCC counsel that to have a realistic chance for the FCC award they would have to upgrade their comparative posture, *i. e.*, Mr. Watts should be replaced by a principal with the enhancement qualities of local residence, local civic participation and, if possible, minority group status (*Id.* p. 4).

35. There was a further reason for Mr. Watts' withdrawal. Mr. Watts was to become a principal in the Hanahan, South Carolina FM application. It was thought that a grant in Hanahan would be attributed for diversification purposes to the Temple applicant. It was believed that to avoid diversification demerit Mr. Watts had to become disassociated from Bell County by the "B" cut-off date (Tr. 656).

36. Mrs. Judy Morales Steinheimer was invited to become principal of Bell County and, on advice of FCC counsel, was offered a one-third equity interest in the company (Tr. 695).

37. In 1984 Mr. Watts declared in the Hanahan proceeding that he intended to become a local resident of Hanahan, South Carolina, and to be employed as the full time operations manager at the proposed station (Bell County Remand Ex. 1, Attachment E). Also in 1984 Mrs. Watts declared in this proceeding that she intended to become a resident of Temple, Texas, and to work full time as general manager of the proposed station. Mrs. Watts testified that to accomplish her integration proposal, she would hire someone full time to care for her two children during her absence from home (Tr. 707). She also testified that her husband would commute twice each month from South Carolina to spend four to five days visiting with the family (Bell County Remand Ex. 1, Attachment F; Tr. 739). Mrs. Watts testified further that the cost of her children's day care would be covered by their private resources or, if need be, by a loan from her father-in-law, Mr. Wade Watts (Tr. 708). The cost of her husband's commuting would be covered by the Hanahan Station's operating funds (Tr. 682). A round trip, coach class airline fare between Temple and Charleston, South Carolina, would cost714 (Tr. 678; official notice based on the *Official Airline Guide*, North American Edition, September 1,

1984).

38. Although Mr. Watts was not to have a regular position at the new Temple station, it was intended that on his commuting trips he would fill in for someone in the event of sudden illness (Tr. 739) or do a talk show one or two times a year (Tr. 740).

39. Notwithstanding Mr. Watts' withdrawal from Bell County, he continued to be active in its business. All of the funds expended until the close of the record have come from the Wattses' jointly-owned resources (Bell County Remand Ex. 1, p. 10; Bell County Remand Ex. 8), and both Mr. and Mrs. Watts have written checks to cover Bell County expenses before and after September 29, 1982 (Bell County Remand Ex. 1, pp. 10-11). Some of the funds in their accounts came from funds received in settlement of the Hanahan, South Carolina, FM proceeding (Tr. 658). Mr. and Mrs. Watts remain jointly responsible for two-thirds of the funding of the Bell County proposal (Temple Broadcasting Ex. 3).

40. Additionally, Mr. Watts participated in making the decision that his withdrawal from Bell County would be beneficial to the applicant (Tr. 684). He also participated in obtaining his father's continuing financial support for Bell County (Tr. 711). He also participated in recruiting Mrs. Steinheimer to become a Bell County principal. His participation included both telephone conversations and a meeting with Mr. and Mrs. Steinheimer in Temple (Bell County Remand Ex. 1, pp. 4-5; Tr. 722; Tr. 723).

41. Following his withdrawal from Bell County, Mr. Watts continued to be involved: he was involved in the May 1984 decision of Bell County to change transmitter site (Tr. 728); he attended settlement discussions with MaryMc (Tr. 730-732; Tr. 759); he wrote checks to pay Bell County's bill from 1982 to date (Tr. 751-752); he participated in the decision that Bell County should appeal the adverse initial decision; he joined both Mrs. Watts and Mrs. Steinheimer on each occasion of their business meetings in Texas (Tr. 809).

The Bona Fides of Progressive's Integration Proposal

42. Mr. Henry Castillo proposes to work full time (at least forty hours per week) as the general manager of Progressive's proposed station (Progressive Remand Ex. 1, p. 1). He is a full time professor of English at Temple Junior College (TJC), in Temple, Texas. Under his present contract with TJC, which runs through May 15, 1987, his schedule is as follows:

Monday	
Class	9:25 - 10:40 a.m.
Office hours	10:40 a.m. - 1:30 p.m.
Tuesday	
Class	8:00 - 9:15 a.m. and 10:50 - 12:05 p.m.
Office hours	9:15 - 10:40 a.m. and 12:05 - 2:05 p.m.
Wednesday	
Class	9:15 - 10:40 a.m. and 6:00 - 8:50 p.m.
Office hours	10:40 a.m. - 1:30 p.m.
Thursday	
Class	8:00 - 9:15 a.m.; 10:50 a.m. - 12:05 p.m. and 6:00 - 8:50 p.m.
Office hours	9:15 - 10:40 a.m. and 12:05 - 2:05 p.m.
Friday	
Class	none
Office	hours none

During the hours 9:00 a.m. - 5:00 p.m., Monday - Thursday, Mr. Castillo thus has five hours and thirty minutes of classes[1] and twelve hours and thirty minutes of office hours, for a total of eighteen hours per week (Progressive Remand Ex. 1, p. 1). Mr. Castillo has taught the same courses for several years, and spends approximately two and one-half hours per week preparing for his classes (Tr. 224-225).

43. The TJC campus is located in Temple, approximately four to five minutes (in heavy traffic) away from the probable location of Progressive's studio (Tr. 224-226).[2]

44. Scheduling of Mr. Castillo's teaching duties, which is done each term, is largely at his discretion and, if he wished, all of his teaching duties could be performed before 9:15 a.m. and after 6:00 p.m. Office hours could also be set at his discretion, during the day, in the evenings or on weekends (Progressive Remand Ex. 1, p. 2).

45. Mr. Castillo testified that it is not uncommon for teachers to hold two full time positions, and that he knows of many teachers at TJC who do, in fact, hold outside positions in addition to their full time teaching jobs (Progressive Remand Ex. 1, p. 2).

46. The TJC Personnel handbook provides:

> The Southern Association's Standards for Colleges states that:
>
> > The institution should have suitable policies to protect against the assumption of outside responsibilities by the faculty member which might cause encroachments upon either the quality or quantity of the work he is employed to perform by the institution.
>
> In keeping with this standard Temple Junior College permits full-time employees to be enrolled in one class; or to instruct an extra class, here or elsewhere; or to be gainfully employed by some other educational institution, organization, or business no more than 10 hours per week. A week is designated Monday through Friday. Employees are expected to inform the Vice President for Instructional Services whenever they take advantage of these provisions (Progressive Remand Ex. 1, p. 2).

This provision has not previously been interpreted to bar faculty members from holding full time positions with non-educational institutions, organizations or businesses and Mr. Castillo testified that he does not anticipate that it will be so interpreted in the future (Progressive Remand Ex. 1, p. 2).

47. Mr. Castillo has discussed his plans with Dr. Marvin Felder, the President of TJC. Dr. Felder has advised Mr. Castillo that he sees no inconsistency between Mr. Castillo's responsibilities to TJC and his plans to work as Progressive's full time general manager. Dr. Felder has also advised Mr. Castillo that, in his opinion, nothing in the above quoted restriction would preclude Mr. Castillo's proposed activities on behalf of Progressive [3] (Progressive Remand Ex. 1, p. 3).

48. According to statistical data published by the United States Department of Labor, Bureau of Labor Statistics, 12.8 percent of all college and university teachers, and 16.1 percent of all male college and university teachers, hold multiple jobs. A greater proportion of college and university teachers (male and female combined) hold multiple jobs than any other category of job holder, with the exception of protective service workers, who hold multiple jobs in the same proportion as college and university teachers (Progressive Remand Ex. 2, pp. 1-3).

CONCLUSIONS OF LAW

Site Availability - MaryMc

49. A review of the record reveals that on the "B" cut-off date and at all times subsequent MaryMc did not have the requisite reasonable assurance that it had available to it a transmitter site atop the Scott and White Hospital roof or at any other location. Ms. Pyle was specifically instructed by her communication counsel about FCC requirements as to reasonable assurance of site suitability prior to her requesting permission to use the hospital site. When she was told by the hospital's counsel that permission to use the hospital roof had already been given to Progressive, she argued that the permission given to Progressive need not be exclusive because only one applicant can be successful in the FCC proceeding. In response, the hospital's counsel told Ms. Pyle that he did not have any authority to grant permission to MaryMc to use the hospital roof, but that she should direct her request to the hospital's Executive Board and its president. She made this request by letter dated December 2, 1982. However, although she stated at the hearing that she phrased the letter so that she would assume that her request was granted unless she was informed otherwise, the fact is the letter did not refer to any such assumption. The letter simply made a straightforward request and stated that, if the hospital were to approve her proposal, she would have to amend her application. Without getting any response either from the Executive Committee or its president, Ms. Pyle amended her application on December 15, 1982, to reflect a change in MaryMc's transmitter site to the Scott and White Hospital roof.

50. From the foregoing it is clear that on December 15, 1982, Ms. Pyle did not have the reasonable assurance of the availability of a transmitter site. The basis of her

certification of site availability on that day was surmise, and surmise or conjecture does not constitute reasonable assurance.

51. Furthermore, Ms. Pyle's claim of assumption of approval is undermined by her own action subsequent to December 15, 1982. She testified that between December 15, 1982, and May 7, 1984, she checked periodically with the hospital's assistant general counsel about the status of her request. She now states that her inquiry only was as to terms of the tenancy. This is belied by the fact that she had initially been told by the hospital's general counsel what the terms would be, if permission were granted. Her post-December 15, 1982, inquiries are indicative of the uncertainty or lack of assurance on her part of the hospital's permission to use its site.

52. The record also reveals that neither did MaryMc possess the requisite reasonable assurance of site availability at any time subsequent to the filing of the December 15, 1982,amendment. After repeated inquiries as to the status of her proposal to lease the hospital site she was advised by letter dated May 31, 1984, that no action would be taken on her request until perhaps after an award was made in the FCC proceeding. In September of 1985, after the initial decision herein, she was advised that contrary to a local newspaper report MaryMc had not been and would not be permitted to place its antenna on the hospital's roof.

The November 18, 1985 Amendment

53. It is in light of the foregoing history that MaryMc's outstanding November 18, 1985 amendment must be deemed unacceptable. Section 73.3522(b) of the Commission's Rules requires a showing of good cause for the late filing of a post-designation amendment. Under *Erwin O' Conner*, 22 FCC 2d 140, 143 (Rev. Bd. 1970), the showing of good cause consists of six elements, to wit: (1) that the amendment was prepared with due diligence; (2) that it was not required by the voluntary act of the applicant; (3) that it will not necessitate the modification or addition of issues or parties; (4) that it will not disrupt the orderly conduct of the hearing or necessitate additional hearing; (5) that it will not unfairly prejudice other parties; and (6) that it will not cause the applicant to gain a comparative advantage.

54. The findings herein indicate that MaryMc's November 18, 1985, amendment was not prepared with due diligence. When MaryMc lost its first site, it filed an amendment specifying the Scott and White site even though no approval from the hospital had been received. Even if it were to be assumed, *arguendo*, that Ms. Pyle was under the misapprehension that she could assume approval, she was disabused of such notion by the May 31, 1984, letter from the hospital that advised her that no action on her request was taken or would be taken until perhaps after an award in the FCC proceeding was made. Certainly at that point MaryMc was on notice that it did not have the requisite reasonable assurance and should then have secured an alternate site. Waiting until after the initial decision was not due diligence and such conduct may not be countenanced.

Financial Qualifications False Financial Certification - Bell County

55. In light of Commission precedent, it must be concluded that, on the day it filed its application Bell County was not financially qualified and falsely certified that it was. It further must be concluded that Bell County presently does not possess the requisite financial qualifications to be a Commission licensee.

56. Bell County has shown that at the time its application was filed it required57,531 to construct and operate its proposed station for three months without regard to revenues. Of the57,531 needed,4,000 was to be provided by Teresa and Bill Watts. The balance was to be provided by William Wade Watts. However, there is no proof on the record of any written loan or other agreement existing between Bell County or its principals and William Wade Watts. The Commission requires that loan commitments be in writing. *See Las Americas Communications, Inc.*, 61 RR 2d 1008 (Rev. Bd 1986). Furthermore, the oral commitment by William Wade Watts is flawed. There has been no showing as to the terms and conditions of the verbal loan agreement. Additionally, it appears that William Wade Watts' resources included property owned jointly with his wife Evelyn Watts, but it has not been demonstrated that Mrs. Watts was willing to liquidate any of her assets.

57. Besides the construction and operation costs of57,531, Bell County had to meet additional expenses in the amount of21,000 for legal and engineering fees. It was intended that Teresa and Bill Watts would meet these expenses from their established income, but it has not been substantiated that their income is adequate to meet this additional expense. In the alternative, William Wade Watts was to provide the money for these expenses. But, again, no written agreement exists, no terms were delineated, and there is no evidence that Mrs. Evelyn Watts would be willing to liquidate any of her assets jointly held with her husband.

58. From the foregoing, it is evident that Bell County, in light of the Commission's requirements which every applicant is presumed to be familiar with, knew or should have known that it was financially unqualified. The record reflects that Teresa Watts was familiar with her and her husband's balance sheet and the balance sheet of her father-in-law, William Wade Watts. It must be concluded that Bell County's 1982 certification of financial qualifications was knowingly false when made.

59. In 1987 Bell County changed its financial qualification posture. It now needs150,150 to construct and operate and40,000 to pay for legal fees. To meet the150,000 outlay, Teresa and Bill Watts are to provide 10,000; William Wade Watts is to loan25,000 and Jean-Pierre Bleger is to purchase non-voting shares and acquire a one-third equity interest in the company in payment of120,000.

60. The record does not substantiate Bell County's claim that it can effectuate its present financial proposal. To begin with, in demonstrating Mr. Bleger's ability to pay120,000 his monthly income was overstated. He actually has a monthly deficit of more than6,000. And although he has substantial real estate holdings, no evidence has been presented substantiating the stated estimates of their value, or Mr. Bleger's willingness to sell any of them or pledge any of them as collateral for a loan.

61. Additionally, Mr. William Wade Watts' commitment to loan money continues to be flawed in that it appears he is relying on property jointly held with his wife, but has not produced her expressed willingness to liquidate the assets he will use to make the loan.

62. As for Teresa and William Watts, the record shows that they have cash in the amount of11,500 to make the10,000 loan. There is no showing to what extent their other assets have liquidity. The Wattes also have to meet a monthly legal fee charge of1,300 (there is no evidence that Mrs. Judy Morales Steinheimer can meet her share). What is uncertain on the record is whether the Wattes will have to rely on savings to meet the monthly legal fee.

Misrepresentation Lack of Candor

63. Mrs. Teresa Watts testified at one point in the hearing that none of Bell County's financing has come from the individual assets of her husband. Later it developed that she drew on a money market account held only in her husband's name. Bell County has presented a legal opinion from a Texas practising attorney that under Texas law the account is considered to be community property and in no sense can be considered the separate or individual asset of William A. Watts. Having observed the demeanor of Teresa Watts on the witness stand, and based on the testimony presented, it is ruled that Teresa Watts did not intentionally misrepresent that her husband made no financial contribution, but that she was confused as to the legal status of the money market account. The issue is resolved in Bell County's favor.

The Bona Fides of the Bell County Integration Proposal

64. The record reflects that prior to the withdrawal of William A. Watts from Bell County, he and Teresa Watts worked as a team. It was decided early that she would have a controlling interest primarily to gain a female preference, and that William A. Watts' interest was to be expendable depending on the comparative strength of competing applicants. Mr. Watts was to be the "head of the company" because this image was important for doing business in the Temple, Texas community. And when William A. Watts withdrew from the company, their foremost consideration was to save the application. It did not matter to either of them how much equity either of them owned as long as their Temple application remained competitive. The record amply shows that William A. Watts was considered as part of the team even after he withdrew from the company. In fact, his participation in station affairs was expected even after he was to make his residence in Hanahan, South Carolina. The inescapable conclusion is that Teresa and William A. Watts, at all times, made a concerted effort to maintain the competitive status of the application of Bell County. It is deemed that Mr. Watts' withdrawal was made in name only. Mr. Watts was and will continue to be an integral part of Bell County's operation. It is ruled that Teresa Watts' two-thirds interest in Bell County for all practical purposes is jointly held with Mr. William A. Watts. Inasmuch as Mr. Watts' integration is not of decisional significance, Bell County only can be credited with the one- third integration of Teresa Watts and the one-third integration of Judy Morales Steinheimer.

The Bona Fides of the Progressive Integration Proposal

65. The record indicates that there is no question that Henry Castillo will be integrated into management on a day-to-day basis. The question is whether he can be credited with a 40 hour per week proposal. There is no evidence that anything precludes Mr. Castillo from putting in 40 hours per week. Nothing in Mr. Castillo's teaching contract or scheduled teaching commitments precludes it. The problem is that Mr. Castillo is committed to put in "office time" during the normal work week. Presently he puts in twelve and one-half hours "office time" per week. Were this practice to continue, and there is no evidence to indicate that it would not, Mr. Castillo would not be in the proposed station on a weekly basis for twelve and one-half hours out of the normal nine to five work week. The essence of the full time integration credit is the day-to-day full time availability of the principal to the general public. In light of this Commission policy, Mr. Castillo may be credited with only part time integration. Mr. Castillo also teaches five and one-half hours per week during the hours of nine to five. This schedule can be modified in the future so as to avoid any teaching during the nine to five period. But even this five and one-half hour period does not undermine the part time credit because, overall, on his present schedule Mr. Castillo will be able to put in more than twenty hours per week during a normal nine to five work week into the management of the proposed station.

ULTIMATE CONCLUSIONS

66. In light of the foregoing, it is concluded that MaryMc is disqualified because of the lack of a viable transmitter site. It is also ruled that MaryMc's November 18, 1985 Petition for Leave to Amend must be denied. It is also concluded that Bell County is disqualified because it is financially unqualified and because its 1982 certification of its financial qualification was false. It is further concluded that Progressive remains the only qualified applicant.

Accordingly, IT IS ORDERED that unless an appeal from this Supplemental Initial Decision is taken to the Commission by a party or the Commission reviews this Supplemental Initial Decision on its own motion in accordance with Section 1.276 of the Rules, the application of Progressive Communications (File No. BPH-820512AP) for a construction permit to build and operate a new FM broadcast station at Temple, Texas IS GRANTED, and the applications of Mary McFaddin Pyle, dba MaryMc Broadcasting Co. (File No BPH-820524BB) and Bell County Broadcasting Company (File No. BPH-820524BJ) ARE DENIED.[4]

FEDERAL COMMUNICATIONS COMMISSION

John M. Frysiak
Administrative Law Judge

FOOTNOTES

[1] Seven hours and fifty minutes of classes are before 9:00 a.m. or after 6:00 p.m.

[2] Citations to the transcript of Mr. Castillo's testimony are from the original hearing, in 1984. Mr. Castillo was not requested to appear for cross- examination during the remand hearing.

[3] Dr. Felder read Mr. Castillo's statement (Progressive Remand Ex. 1) before it was submitted in this proceeding.

[4] In the event exceptions are not filed within 30 days after the release of this Supplemental Initial Decision and the Commission does not review the case on its own motion, this Supplemental Initial Decision shall become effective 50 days after its public release pursuant to Rule 1.276(d).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-304

In re Application of

RONALD H. LIVENGOOD — File No. BPH-850711QJ

For Construction Permit
for a New FM Station in
Somerset, Kentucky

Appearances

Timothy K. Brady, on behalf of Ronald H. Livengood.

SUMMARY DECISION OF CHIEF ADMINISTRATIVE LAW JUDGE THOMAS B. FITZPATRICK

Issued: December 23, 1987; Released: January 28, 1988

PRELIMINARY STATEMENT

1. The Commission, by the Chief, Audio Services Division, Mass Media Bureau, acting pursuant to delegated authority, issued a *Hearing Designation Order (HDO)*, released August 6, 1987, published in the Federal Register on August 17, 1987 (52 Fed. Reg. 30732),[1] designating for hearing the mutually exclusive applications of Ronald H. Livengood (Livengood) and Cora P. Knight dba Knight Broadcasting Company (Knight), for a new FM station to operate on Channel 272A at Somerset, Kentucky. The *HDO*, in addition to the customary comparative issue, specified an issue to determine whether the Livengood and Knight proposals would constitute a hazard to air navigation.

2. The Presiding Judge, by *Memorandum Opinion and Order* (FCC 87M- 2323), released September 24, 1987, granted the "Joint Petition for Approval of Settlement Agreement," filed July 26, 1987, as supplemented, filed by Livengood and Knight. The Presiding Judge, in the cited *Order*, approved the Settlement Agreement and dismissed, with prejudice, the Knight application, thus resolving the mutual exclusivity in this proceeding. As a result, the only remaining issue in this proceeding is the air hazard issue relative to the Livengood proposal.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

3. Livengood, on October 21, 1987, filed a "Motion for Summary Decision," requesting that the Presiding Judge resolve the air hazard issue specified against it in its favor. In support of this request for favorable resolution of the air hazard issue, Livengood submitted a "Determination of No Hazard to Air Navigation," issued by the Federal Aviation Administration (FAA), on October 14, 1987. The FAA determination made clear that its ruling of no hazard was subject to review if an interested party filed a petition on or before November 13, 1987, seeking review. For this reason, the Presiding Judge, by *Order* (FCC 87M-2687), released October 28, 1987, directed Livengood to inform the Presiding Judge, in a timely manner, whether the FAA determination became final. On November 27, 1987, Livengood filed a "Supplemental Motion for Summary Decision," which included a "Declaration Given Under Penalty of Perjury," by Ronald H. Livengood, wherein he represented that the FAA had informed him that the "Determination of No Hazard to Air Navigation" became final on November 23, 1987.

4. The Presiding Judge agrees with Livengood that no substantial material fact remains for resolution relative to the air hazard question, and that this issue may be resolved in Livengood's favor without the necessity of a hearing.

NEED FOR CONDITIONAL GRANT

5. When the Presiding Judge issued the *Memorandum Opinion and Order* (87M-2323) approving the dismissal agreement and dismissing the Knight application, he specifically noted that he was in receipt of notification from the Fee Section that the Livengood and Knight Notices of Appearance had been filed and had been processed without requiring the payment of the 6,000 hearing fee. This action of the Fee Section was taken with respect to the note to Section 1.221 of the Commission's Rules, 47 C.F.R. 1.221(g). The Presiding Judge, in the cited *Memorandum Opinion and Order*, further noted that in MM Docket No. 87-165, Leland, Michigan, he had directed Pyramid Communications, Ltd. (Pyramid), to file a request to the Managing Director for a declaratory ruling as to whether it was required, under 47 C.F.R. 1.1104, to file a6,000 hearing fee. The Presiding Judge ruled that the ruling by the Managing Director relative to the Pyramid request would be controlling with respect to Livengood's proposal. The Managing Director, by letter dated November 10, 1987, addressed to the Presiding Judge, stated that he would recommend that the Commission address the payment of the6,000 fee when ruling on requests for reconsideration of the *Fee Program Order*.[2] The Managing Director recommended that in such instances where an issue remains outstanding against an applicant after approval of a dismissal agreement, that ultimate grant of the remaining applicant be conditioned on the outcome of the reconsideration order.

6. Accordingly, the grant of Livengood's application will be subject to the condition that Livengood make the6,000 hearing fee in the event that the Commission, in issuing its reconsideration order, determines that such payment is required.

Accordingly, IT IS ORDERED that the "Motion for Summary Decision, filed October 21, 1987, as supplemented, by Ronald H. Livengood, IS GRANTED, and the air hazard issue IS RESOLVED in its favor.

IT IS FURTHER ORDERED that the application of Ronald H. Livengood for a construction permit for a new FM broadcast facility to operate on Channel 272A, at Somerset, Kentucky, IS GRANTED, [3] subject to the condition set forth, *supra*.

FEDERAL COMMUNICATIONS COMMISSION

Thomas B. Fitzpatrick
Chief Administrative Law Judge

FOOTNOTES

[1] 2 FCC Rcd 4660 (1987).

[2] *Establishing of a Fee Collection Program*, 2 FCC Rcd 947 (1987).

[3] In the event that exceptions are not filed within 30 days after the release of this Summary Decision, and the Commission does not review the case on its own motion, this Summary Decision shall become effective 50 days after its public release, pursuant to 47 C.F.R. 1.276(d).

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of

MONTGOMERY INDEPENDENT CELLULAR TELEPHONE COMPANY, INC. — File No. 22349-CL-P-139-B-86

For a construction permit to establish a new cellular system to operate on Frequency Block B in the Domestic Public Cellular Radio Telecommunications Service to serve the Montgomery, Alabama MSA

ORDER ON RECONSIDERATION

Adopted January 19, 1988; Released January 28, 1988

By the Chief, Common Carrier Bureau:

1. On July 22, 1987, the Mobile Services Division (MSD) released a Memorandum Opinion and Order dismissing the application of Montgomery Independent Cellular Telephone Company, Inc. (MICTC). *See Montgomery Independent Cellular Telephone Company, Inc*, 2 FCC Rcd. 4385 (1987). MICTC has filed a petition for reconsideration. BellSouth Mobility Inc. (BMI) has filed an opposition and MICTC has filed a reply.

2. In *Montgomery Independent Cellular Telephone Company, Inc.*, the MSD held that MICTC was ineligible to apply for the wireline frequency block for the Montgomery, Alabama MSA because it had not complied with Section 22.902(b) of the Rules, as promulgated in the *Cellular Communications Systems* rulings,[1] and the Commission's decision in *Advanced Mobile Phone Service Inc. (Los Angeles Decision)*. [2]

3. At the time MICTC filed its application for the wireline frequency block in Montgomery, Section 22.902(b) of the Commission's Rules provided in pertinent part that "common carriers also engaged directly or indirectly in the business of affording public landline message telephone service will be assigned frequencies from Cellular System B in those general areas in which they provide such landline service . . . ." [3] In its *Report and Order*, the Commission explained that it "will consider a wireline applicant to be eligible to apply only in those general areas in which it *or an affiliate company* is certified as a wireline carrier."[4]

4. MICTC argues that it is eligible to apply because it is "affiliated" with Mon-Cre, an eligible carrier for the Montgomery MSA, pursuant to the definition of affiliate in Section 22.13(a)(1) of the Rules, which defines affiliate as any business holding a 5% or more interest in the applicant. It disagrees with the Division's holding that an affiliate must be under the control of an eligible carrier. MICTC further states that if the eligible affiliate is also required to retain majority interest control over the ineligible affiliates pursuant to the *Los Angeles Decision*, then MICTC did not have adequate notice of that decision or its control requirement. In this regard, MICTC argues that in the *Los Angeles Decision*, the control issue was neither briefed nor argued, that the control language used in the *Los Angeles Decision* was merely *dicta*, and that the *Los Angeles Decision* was not published in the Federal Register in accordance with Section 552(a)(1) of the Administrative Procedure Act (APA),[5] thus precluding adequate notice. Additionally, MICTC states that the term "general area," used in Section 22.902(b), was ambiguous and therefore MICTC had insufficient notice that this term referred only to those areas within the MSA, which construction precluded MICTC from using its affiliates certified in the areas outside the MSA to meet the eligibility requirements.

5. We disagree with MICTC and we therefore affirm the MSD's decision. To establish its eligibility, MICTC relies on the definition of affiliate set out in Section 22.13(a)(1) of the Rules. This section applies only to an applicant's disclosure of the real party in interest behind the application.[6] On the other hand, in the *Los Angeles Decision*, the Commission expressly held that entities filing or prosecuting cellular applications must be under the *control* of a carrier eligible for the frequency block for which the application was filed. In that decision, the Commission stated that the "ownership interest [of the ineligible carrier] must be minor and control of the company must remain vested in the eligible carrier . . . ."[7] Mon-Cre is eligible to apply for the Montgomery MSA. However, because it owns only a 16% interest in MICTC, MICTC is not eligible through Mon-Cre to apply for the Montgomery MSA. The Commission's rulings thus preclude a finding that Section 22.13(a)(1) provides the applicable definition of "affiliate" for purposes of wireline application eligibility. Therefore, the MSD correctly found that MICTC is ineligible because it is neither a provider of wireline service in the Montgomery, Alabama MSA, nor is it controlled by a provider of such service in the Montgomery, Alabama MSA.

6. In addressing the issue of the provision of adequate notice, the Commission has concluded that "[t]he industry is . . . entitled to expect rules defining the required content of applications that are *reasonably comprehensible* to men acting in good faith."[8] Not only is the control language in the *Los Angeles Decision* "reasonably comprehensible," it is patently clear. We further conclude that the term "general area" was also reasonably comprehensible from the Commission's rulings in the *Los Angeles Decision* and in *Cellular Communications Systems*, all of which were decided prior to MICTC's filing its application.

7. That the term "general area" only applies to the MSA in question is "reasonably comprehensible" from the Commission's decisions made public prior to MICTC's filing. The definition of "general area" was made abundantly clear in the *Los Angeles Decision*. There, the Commission noted in its summary of the *Cellular Communications Systems* rulings: "Eligibility for the 20 MHz wireline allocation was limited to those telephone companies already providing wireline telephone service in a particular market."[9] This statement was amply supported by the Commission's rulings in *Cellular Communications Systems*. In its *Further Reconsideration Order*, the Commission stated

that the cellular geographic service areas were to be based on standard metropolitan statistical areas and that wireline carriers will be eligible to provide cellular service in any SMSA in which they are certified to provide landline service.[10] In the *Report and Order*, the Commission said it would "consider a wireline applicant to be eligible to apply only in those general areas in which it or an affiliate company is certified as a wireline carrier and that it would only consider one applicant per market.[11] In its *Reconsideration Order* in the same docket, the Commission noted that wireline carriers are "easily identifiable since they are already certificated in the same general area" as the markets to be served.[12] If "general area" is construed to include areas outside the MSA without further definition, the wireline carrier will be anything but "easily identifiable." Further, the Commission stated that "[w]here more than one wireline company is certificated in a standard metropolitan statistical area (SMSA), and those carriers desire to provide cellular service, we strongly urge them to reach mutually acceptable arrangements in order to avoid electrically mutually exclusive applications which require comparative hearings."[13] In light of these pronouncements, we find that the terms in question were "reasonably comprehensible."

8. Further, we disagree with MICTC that the meaning of "general area" was unclear and confusing prior to the Commission's *Rural Cellular* order[14], which was published after MICTC's application was filed. As indicated above, the term "general area" was clear in the *Los Angeles Decision* and in its predecessors, which orders were released prior to *Rural Cellular* and prior to MICTC's filing. Therefore, in *Rural Cellular*, we were codifying the meaning of the term "general area" as it had been used in the *Los Angeles Decision* and its predecessors. MICTC's citation of *Maxcell Telecom Plus v. FCC*, 815 F.2d 1551, 1560 (D.C. Cir. 1987) (holding that where an applicant relied upon the Commission's public pronouncements on the deadline for fill-in applications, which were needlessly unclear, and such clarity was not provided until after the deadline, the Commission was precluded from retroactively applying the subsequent clarification) is inapposite because unlike the case *sub judice*, in *Maxcell*, the deadline requirements were not made clear until after the applicants had filed.

9. Next, MICTC argues that it did not have adequate notice of the control requirement because the *Los Angeles Decision* was not published in the Federal Register pursuant to Section 552(a)(1) of the Administrative Procedures Act (APA).[15] Section 552(a)(1) requires agencies to publish in the Federal Register substantive rules of general applicability and statements of general policy or interpretations of general applicability. However, it is well established in several circuits of the United States Courts of Appeals that Section 552(a)(2)(A) of the APA, and not Section 552(a)(1), is the applicable rule under these circumstances. Thus, the Tenth Circuit explained:

> The Administrative Procedure Act requires an agency to publish in the Federal Register 'substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency.' 5 USC Section 552(a)(1)(D). However, an agency may also formulate interpretations of general applicability in the course of adjudicatory opinions without publishing those opinions in the Federal Register. *Cheshire Hospital v. New Hampshire - Vermont Hospital Service, Inc.*, 689 F.2d 1112, 1123 (1st Cir. 1982); *Nicholson v. Brown*, 599 F.2d 639, 648 (5th Cir. 1979); *Mehta v. Immigration & Naturalization Service*, 574 F.2d 701, 705 (2d Cir. 1978). The Administrative Procedure Act requires only that the agency make such opinions available for public inspection and copying. 5 USC Section 552(a)(2)(A).

City of Gillette, Wyoming v. FERC.[16] *In Cheshire*, the First Circuit noted that harmonizing Sections 552(a)(1)(D) and 552(a)(2)(A) compels the above- quoted conclusion.[17] The *Los Angeles Decision* was made available to the public. We therefore reject MICTC's contention that the policy set forth in the *Los Angeles Decision* is invalid because the decision was not published in the Federal Register.[18]

10. The petitioners state that other applicants have filed cellular settlements identical to MICTC's that the Commission has accepted. Therefore, MICTC argues, the Commission is barred from strictly enforcing the eligibility requirements of Section 22.902(b) of the Rules in this case. This position is untenable. The Commission has not initiated any new policy or practice requiring a stricter interpretation of the eligiblity rules. It has been the consistent policy of the Commission to reject all ineligible cellular applicants.[19]

11. MICTC argues that even if its application were defective, it should now be allowed to amend its application to reflect a corporate structure which satisfies the requirements of Section 22.902(b) of the Rules. However, because the eligibility requirements of Section 22.902(b) pertain to the applicant's eligibility to apply,[20] and because MICTC was ineligible to apply for a cellular construction permit, it cannot now amend its application.

12. Accordingly, we affirm the MSD's decision to dismiss MICTC's application for failure to meet the wireline application eligibility requirements.

ORDERING PARAGRAPHS

13. Accordingly, IT IS ORDERED, That the Petition for Reconsideration filed by Montgomery Independent Cellular Telephone Company, Inc., IS DENIED.

14. IT IS FURTHER ORDERED That the *Memorandum Opinion and Order*, DA 87-944, released July 22, 1987, IS AFFIRMED.

15. This order is issued under Section 0.291 of the Commission's rules and is effective on its release date. Applications for review under Section 1.115 of the rules may be filed within 30 days of the date of public notice of this order. *See* Section 1.4(b)(2).

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] *Report and Order*, 86 FCC 2d 469 (1981), *recon.* 89 FCC 2d 58 (1982) ! (*Reconsideration), further recon.* 90 FCC 2d 571 (1982) (*Further Reconsideration), appeal dismissed sub nom. United States v. FCC*, No. 82-1526 (D.C. Cir. 1983).

[2] 93 FCC 2d 683 (1983).

[3] *Report and Order*, 86 FCC 2d at 565.

[4] *Id.* at 490 n. 56 (emphasis added).

[5] 5 U.S.C. Section 552(a)(1)(1986).

[6] MICTC cites *Telpage, Inc.*, Mimeo No. 1390 (Common Carrier Bureau, released December 20, 1983) at para. 7 and *Petition for Reconsideration for Omission of Ownership Information*, FCC 86-40 (Common Carrier Bureau, released January 24, 1986) for the proposition that the term "affiliate" should be applied to the issue of wireline eligibility. We note however that both of these cases apply Section 22.13(a)(1) in the context of a real party in interest issue.

[7] 93 FCC 2d at 692. We disagree with MICTC that the issue of control was neither briefed nor argued in the *Los Angeles Decision* and we reject MICTC's characterization of the control issue as *dicta*. In the pleadings before the Commission in the *Los Angeles Decision*, ICS Communications and MCI Communications argued that United States Cellular Corporation (USCC) was not an eligible wireline carrier "particularly . . . because USCC, pursuant to the right of first refusal provision in the Agreement, could acquire up to a *60 percent* interest in the system over a period of time." 93 FCC 2d at 691 (emphasis added). Thus, the control issue was argued. Further, the control language in the *Los Angeles Decision* was not *dicta*. In subsequent decisions, the Commission has characterized the *Los Angeles* Decision as "holding" that entities prosecuting cellular applications must be under the control of a carrier eligible for the frequency block applied for. See GTE Mobilnet, Inc., CC Mimeo 613 para. 3, released November 2, 1984 and James F. Rill, 60 Rad. Reg. 2d (P&F) 583, 592 para. 28 (1986). James F. Rill is cited here merely to illustrate the legal impact of the Los Angeles Decision.

[8] Radio Athens Inc. (WATH) v. FCC, 401 F.2d 398, 404 (1968)(dismissal of application without hearing for patent nonconformance with Commission rules) (emphasis added).

[9] 93 FCC 2d at 685.

[10] Further Reconsideration Order, 90 FCC 2d at 577.

[11] 86 FCC 2d at 490 n. 56.

[12] Reconsideration Order, 89 FCC 2d at 69.

[13] Id. at 76.

[14] 51 Fed. Reg. 26895 (July 28, 1986), 60 Rad. Reg. 2d (P&F) 1029, 1035 n. 14 (1986).

[15] 5 U.S.C. Section 552(a)(l)(1986).

[16] 737 F.2d 883, 886 (10th Cir. 1984).

[17] Cheshire, 689 F.2d at 1123.

[18] Because the rule at issue in FM Transmitter Site Map Submissions, FCC 86-482, 61 Rad. Reg. 2d (P&F) 577 (1986), was not advanced in an adjudicatory opinion, MICTC's reliance upon it is inapposite.

[19] Although it is conceivable that some settlements consisting of similar corporate structure as MICTC may have slipped by, the Commission has never permitted such an application to remain on file. Had such a fact been brought to our attention, or had we discovered those errors, we would have enforced Section 22.902(b) and denied those applications. The Commission cannot ignore the eligibility requirements in this case simply because it may have inadvertently permitted similar corporate structures in the past. See generally American Cellular Network Corp. of America, FCC 87-236, released August 3, 1987.

[20] 93 FCC 2d at 692.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of

PETROLEUM COMMUNICATIONS, INC. File No. 00289-CL-MP-87

to modify its Cellular Geographic Service Area for Station KNKA411 on Frequency Block A in the Domestic Public Cellular Radio Telephone Service for the Gulf of Mexico

MEMORANDUM OPINION AND ORDER

Adopted January 8, 1988; Released January 28, 1988

By the Chief, Mobile Services Division:

1. Before us is an application by Petroleum Communications, Inc. (Petro Com) to expand its Cellular Geographic Service Area (CGSA) to the east and south of its present CGSA in the Gulf of Mexico.[1] The new area would expand Petro Com's CGSA to include Gulf waters as follows: from a point on the coastline at the border between Texas and Mexico, which is approximately 26 degrees North Latitude, the proposed CGSA boundary line follows the latitudinal line eastward until it reaches the 1000 foot depth line in the Gulf. From there, the proposed CGSA boundary line follows the 1000 foot depth line eastward through the Gulf of Mexico until it reaches the line of 85 degrees West Longitude. The proposed CGSA boundary line then follows the longitudinal line northward until it intersects with the coastline. Petro Com's landward CGSA boundary is the coastline. In addition to its CGSA expansion request, Petro Com seeks a waiver of the requirements of Sections 22.903(a) and 22.913(a)(2) of the Commission's Rules[2] to permit it to submit the required map of the boundary of its modified CGSA at a scale other than 1:250,000 and not to submit a map of the CGSA boundary on an 8-12 by 11 inch page. Petro Com's petition is opposed by Southwestern Bell Mobile Systems, Inc. (SBMS), SJI, Inc. (SJI), GTE Mobilnet Incorporated (GTE), and Lynn J. Juanes (Juanes). Petro Com has filed responsive pleadings. [3]

CGSA Expansion

2. In *Petroleum Communications, Inc.*, 1 FCC Rcd 511 (1986) (hereinafter "First PCI Order), *aff'd* 2 FCC Rcd 3695 (1987) (hereinafter "Second PCI Order), the Commission ruled that Petro Com's Gulf of Mexico Service Area (GMSA) covers the Gulf of Mexico up to the coastline of the States bordering the Gulf.[4] In the lengthy proceedings leading up to licensing of the Gulf cellular carriers, no party or intervenor has suggested that Gulf of Mexico cellular service should be confined to an area outside the three-mile or three-league line.[5] Nevertheless, the Commission considered the alternatives for limitations of Gulf of Mexico cellular licensees in coming to its decision on whether and where to set the Gulf of Mexico GMSA. The result of the Commission's deliberation was set out in the *First and Second PCI Orders*. In the following paragraphs we further discuss the reasons for our decision not to confine Gulf licensees' service outside the three-milethree-league line. As a threshold matter, however, we note that Juanes' and GTE's petitions on this subject are untimely petitions for reconsideration of the *First PCI Order*.[6]

3. Juanes (Block A, Galveston) and GTE (Block B, Beaumont, Galveston, and Houston) argue that Gulf of Mexico cellular licensees should be barred from serving the water area from the coastline to the three-league line established by the Supreme Court as the limit of Texas' jurisdiction. Their reason for this position is that Section 11.013 of the Natural Resources Code, Texas Statutes Annotated, states that the "gulfward boundary of each county located on the coastline of the Gulf of Mexico is the Three Marine League line as determined by the United States Supreme Court." (The Three Marine League line is nine nautical miles from the low-tide coastline.) Accordingly, argue Juanes and GTE, since they are MSA licensees whose service areas include coastline counties, it follows that they are authorized to serve points offshore up to the Three Marine League line.

4. Juanes and GTE further argue that Petro Com's service is secondary and that onshore providers of cellular service are preferred for service to marine subscribers. GTE argues that the land-based cellular system is a better connection between marine subscribers and rescue organizations because callers would have to acquire roamer status with Petro Com prior to making a call to landline operators. Juanes argues that the Commission has established priority of onshore licensees over Gulf licensees. GTE also opposes Petro Com's application because it would "create a precedent by permitting a Gulf of Mexico cellular licensee, such as Petro Com, to extend its service area to the low-tide coastline" because such extension "may make future resolution of frequency conflicts difficult, if not impossible."

5. Juanes and GTE are incorrect that their coastal MSA areas include water areas outside the coastline. Water areas were specifically excluded from MSA areas from the inception of cellular application licensing. The 1980 Census of Population, Bureau of the Census, Volume 1, Chapter A, Part 1 (United States Summary), counted only land area for counties bordering lakes and oceans.[7] The Commission adopted, without modification, the Census Bureau policy of excluding water areas from consideration with MSA areas. *See* Section 22.903(a) of the Commission's Rules; *see also Further Order Prior To First Hearing Session*, CC Docket No. 82-721, Fitzpatrick, J., released December 10, 1982 (According to the U.S. Bureau of Census, the total area of the counties comprising the Chicago modified SMSA. . .does not include any part of Lake Michigan.) Accordingly, the Commission does not count water areas such as those within the Three Marine League line in licensed MSA areas.

6. This policy is fully supported by *Advanced Mobile Phone Service, Inc.*, (Miami Order), 54 Rad. Reg. 2d (P & F) 260 (1985), a case cited by both Juanes and GTE. In the Miami Order, the Commission stated that "the U.S. Bureau of Census has determined that the SMSA does not include extended lake or ocean areas." *Id* at p. 271. Moreover, the Miami Order states that "service coverage out-

side the SMSA is not protected from interference," citing *Cellular Mobile Systems of Indiana, Inc.* (Indianapolis Order) 53 Rad. Reg. 2d (P & F) 412, (1983).

7. The line of cases associated with licensing the Gulf of Mexico cellular operatives is entirely consistent with the above-cited cases. The Gulf operatives' GMSA is analogous to land licensees' MSA or RSA areas, and neighboring operatives owe one another interference-free operation. In *Petroleum Communications*, FCC 83-434, released October 7, 1983, the Commission stated that "land-based cellular operators will be required to coordinate operation of their systems to avoid interference to any offshore cellular systems granted by the Commission." (At para. 20). In *Petroleum Communications*, 1 FCC Rcd 511 (1986), the Commission repeated that "the Gulf licensees are entitled to protection from land based [cellular] system interference within the GMSA." (At note 16).

8. Thus, we will apply similar rules to incursions by land licensees into the Gulf as now apply to incursions by land licensees into RSA areas. Although there is no restriction as to the size of 39 dBu contour extensions over unclaimed water areas by land licensees, once a permit is granted to another licensee for the water area, the land licensee must provide interference-free service, if necessary changing its CGSA and 39 dBu contours. The provisions of Section 22.902 of the Commission's Rules apply.

9. In addition, because the Gulf of Mexico is a licensed service area, land licensees of both frequency blocks may not intrude more than a *de minimis* amount into that portion of the Gulf which is covered by the CGSA of one or more Gulf licensees. *See Metro Mobile CTS of Charlotte, Inc.*, 2 FCC Rcd 3929 (1987) (The commercial interest of either frequency block licensee in the subscribership of its service area will be protected from encroachment by neighboring licensee of the opposite frequency block). The restrictions codified in Section 22.903(a) of the Commission's Rules applies to both land and Gulf licensees.[8] Thus, the cellular licensees of Gulf of Mexico coastal MSAs between 26 degrees North Latidude and 85 degrees West Longitude may not expand their 39 dBu contours more than a *de minimis* extent outside the coastline. Other coastal MSAs are not subject to this restriction unless and until their off-coastal water areas are separately licensed.

10. The public interest arguments raised by Juanes and GTE in support of their positions are not persuasive. First, their argument that Gulf of Mexico cellular service is secondary to land service refers to a ruling in the *First PCI Order* which was made in the narrow context of Petro Com's argument that it had the right to claim any GMSA it deemed appropriate, in particular, land areas. The point made in the *First PCI Order* was, and is, that Petro Com had notice from the beginning of this proceeding that it could not intrude on land cellular service within the land licensees' MSAs, which, as discussed above, includes [illegible] inside the coastline. The ruling echoes the holding in the *1983 Order* that "any incidental service provided by Petro Com in either the top-90 SMSAs or in smaller markets is secondary to service offered by land-based systems. . ." Clearly, this statement refers to service over land and does not indicate that land licensees have the right to claim water areas outside the coastline. Accordingly, as Petro Com correctly notes in its Consolidated Opposition, its cellular service is "secondary" to land licensees only to the extent that it must provide interference-free service to land licensees inside the coastline. Second, GTE's argument that watercraft emergency use of cellular would be compromised by the necessity to establish roamer contact and make a long-distance call is not substantiated. Cellular telephones regularly used on watercraft would likely be registered with Gulf licensees, and in any event, regional service agreements would smooth inter- area calls. Finally, GTE's argument that resolution of frequency conflicts may be difficult or impossible is also not substantiated. There are a sufficient number of cellular channels available to make such conflict unlikely. Moreover, Section 22.902 of the Commission's rules indicates that if licensees cannot resolve their coordination problems, the Commission will determine and enforce the necessary resolution.

11. It will be useful at this juncture to summarize the rules pertaining to coastal MSA licensees and water area licensees:

a) Coastal MSAs and RSAs do not include water areas outside the coastline. (*Miami Order* and *First* and *Second PCI Orders*.)

b) Where water area is not claimed within a water licensee's CGSA, there is no restriction on the land licensee's incursion into that area. (*Miami Order*).

c) Water licensees may not have land transmitters and they are restricted to *de minimis* incursions over land, (based on the Carey model of signal propagation), whether the land area is licensed to a cellular carrier or not. (However, Gulf licensees are not restricted from taking advantage of Section 22.31(a)(i). *See* note 8, *supra*.) If a water licensee enters into a regional cellular agreement with a coastal MSA or RSA licensee, the prohibition against land transmitters may be waived as to that land area upon mutual agreement and any required Commission approval. (*First PCI Order*.)

d) Where there exists a water licensee's CGSA, the land licensee must provide interference-free service. Sections 22.902(d) and 22.903 of the Commission's Rules apply as between the water licensee and neighboring MSA or RSA licensees.

Waiver Request

12. Petro Com requests a waiver of the requirements of Sections 22.903(a) and 22.913(a)(2) of the Commission's Rules. Petro Com argues in support of its waiver request that all of the territory it seeks to add to its CGSA is offshore water area. Petro Com points out that maps of the Gulf of Mexico on a scale of 1:250,000 generally display nothing but water depth, the paths of submerged pipelines, irrelevant data such as the names of petroleum lease blocks, and the mark of an occasional offshore production platform. Petro Com argues that "[s]ince such maps would depict nothing of significance to the Commission, there would be no value to preparation and submission of such maps at a scale of 1:250,000." Petro Com notes that a map of the entire Gulf of Mexico on an 8-12" x 11" sheet would be too small a scale to be useful. Petro Com also notes that if it were to provide the 40 feet of maps required to show the Gulf on a scale of 1:250,000, the result would be too large to be useful. We agree. Petro Com has provided a map of manageable and reasonable scale, adequate to show the extent of its CGSA. In addition, an 8-12" x 11" page, on a 1:250,000 scale, showing the proposed new cell site location, is adequate to prove

that the 39 dBu contours do not exceed the GMSA and is also adequate to place adjacent licensees on notice of the cell's position.

13. Some of the concerns raised by Petitioners appear to be based on their lack of success in obtaining a reasonably clear copy of Petro Com's map. SBMS argues in part that it had to piece together 8-12" x 11" pages in order to see the extent of Petro Com's CGSA. Juanes argues that the only available map is oversized and must be copied on a piecemeal basis, and that the oil leasing map has too many markings to be reproduced clearly. GTE argues that either Petro Com did not indicate its CGSA on the map or the method of indication does not permit copying. In its response, Petro Com offers "to supply . . . a full size copy of its map exhibit, which will not require assembly." Interested parties who have difficulty obtaining a satisfactory copy of Petro Com's map should contact Petro Com's counsel directly.

14. SJI opposes Petro Com's waiver request because it argues that one of the maps supplied by Petro Com includes in the GMSA the Chandeleur Islands and part of Breton Sound. Petro Com, in response, indicates that it "inadvertently depicted the boundary of its currently authorized CGSA as extending beyond the seaward shore line of the Chandeleur Islands. . . . The depicted boundary should have terminated at the coast line. . . .Petro Com acknowledges that neither its currently authorized nor its requested CGSA includes any area landward of the coast line." Petro Com further argues that its error is harmless because the Commission's own map is determinative of the coastline and thereby, the limitation on Gulf licensees' service area. We find in Petro Com's favor on this point and because the Commission's maps define the coastline for Gulf area licensees, we find that it is not necessary for Petro Com to file an amended map to correct the error. Any further amendments of the CGSA should, however, show the correct landward boundary.

15. SBMS filed a Reply in which it sought to clarify its opposition to Petro Com's waiver request. SBMS' concern appears to be based on the fact that Petro Com did not show particular cell sites connected with its CGSA expansion, and "SBMS cannot determine where Petro Com is adding base stations within an area on or near the coastline." SBMS is concerned that "Petro Com could place a new or modified base station in an area covered by the proposed CGSA extension in a manner that would cause the 39 dBu contour to extrude beyond the GMSA. . . ." SBMS is also concerned that Petro Com would receive a waiver of the requirement that it file a Schedule B for future major amendments to its CGSA.

16. SBMS' concerns are groundless. Petro Com is required to file a complete Form 401 for major amendments, which include any cell whose contours extend beyond the coastline. Major amendments must be placed on public notice, and the public, including SBMS, will have adequate information regarding such incursions. Cellular applicants, including Petro Com, may file Forms 489 for amendments to, or additional, cell sites if the extant CGSA is not exceeded. Finally, as noted above, we find that grant of Petro Com's requests for waiver of the map requirements will contribute to the clarity of its Forms 401 and 489.

ORDERING PARAGRAPHS

17. WHEREFORE, for the foregoing reasons, IT IS HEREBY ORDERED that the application of Petroleum Communications, Inc., File No. 00289-CL-MP-87 IS GRANTED;

18. IT IS FURTHER ORDERED that the Motion to Accept Late Filed Pleading filed by Petro Com IS GRANTED;

19. IT IS FURTHER ORDERED that the Request for Leave to File Reply filed by Southwestern Bell Mobile Systems, Inc., IS GRANTED;

20. IT IS FURTHER ORDERED that the Petitions to Deny filed by GTE Mobilnet Incorporated, Lynn Juanes, and SJI, Inc., and the Comments filed by Southwestern Bell Mobile Systems, Inc. ARE DENIED.

21. This order is issued under Section 0.291 of the Commission's rules and is effective on its release date. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the rules may be filed within 30 days of the date of public notice of this order. *See* Section 1.4(b)(2).

FEDERAL COMMUNICATIONS COMMISSION

Kevin J. Kelley
Chief, Mobile Services Division
Common Carrier Bureau

FOOTNOTES

[1] Petro Com's CGSA presently extends from the Texas border with Mexico on the eastern (Gulf) side, to Biloxi, Mississippi. Petro Com's service area boundary on the landward side is the coastline. *Petroleum Communications, Inc.*, 2 FCC Rcd 3695 (1987).

[2] Section 22.903(a) requires in pertinent part that "[t]he CGSA must be drawn on one or more U.S. Geological Survey Map(s) with a scale of 1:250,000." Section 22.913(a)(2) specifies that the application must include a copy of such map(s) reduced to an 8-12" x 11" page.

[3] Petro Com filed a consolidated reply to SJI, Juanes, and SBMS. It filed a Motion to Accept Late Filed Pleading and a separate reply to GTE's petition because it did not receive a copy of GTE's petition in a timely manner. Petro Com's Motion will be granted for good cause shown.

[4] In the First and Second PCI Orders, the Commission defined the coastline in accordance with the definition set forth by the Supreme Court in *U. S. v. Louisiana*, 363 U.S. 1 (1960), and the line of cases arising from it, the latest of which is *U. S. v. Louisiana, (Alabama and Mississippi Boundary Case)* 470 U.S. 93 (1985).

[5] Lafourche Telephone Company suggested that the Gulf licensees be required to keep their cells outside the three-milethree-league line, but that their service contours could extend landward past the three-milethree-leaguelimit. Lafourche specifically acknowledged that the "Gulf systems' cells will be able to service the offshore users as well as coastal areas that are not part of the land-based systems CGSAs." *Reply* of Lafourche Telephone Co., filed April 3, 1985. The Bureau dismissed Lafourche and other intervenors for failure to show standing, and because the public interest was adequately addressed. As the record shows,

the Commission's decision protects the land licensees' service areas by requiring that the 39 dBu contours of Gulf licensees not exceed the coastline by more than a *de minimis* amount.

[6] Petro Com argues that none of the petitioners has standing because the CGSA expansion area is far from petitioners' service areas, because their service areas are outside Petro Com's service area, and because their pleadings are untimely petitions to reconsider settled Commission decisions. Petro Com is correct that petitioners do not have formal standing. However, we will consider the arguments raised by Petitioners as informal pleadings pursuant to Section 1.41.

[7] The Census Bureau states that "the total area of [a] county was apportioned between land and water. . . . The boundary between inland and other water was . . . treated as though it were a county boundary line." Page A-5. *See* also Vol. 1, Chapter A, Part 45 (Texas) page 45-66.

[8] The Commission has recently adopted Section 22.31(a)(i) at 2 FCC Rcd 2306 (1987), which limits the time in which a cellular licensee may expand its CGSA before other applicants are permitted to apply for unserved areas. This rule will be applied to Gulf cellular licensees and the Gulf of Mexico Service Area as well.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AM Stereophonic
Broadcasting

MEMORANDUM OPINION AND ORDER

Adopted: January 14, 1988; Released: January 28, 1988

By the Commission:

INTRODUCTION

1. By this *Memorandum Opinion and Order*, the Commission denies three Petitions for Rule Making concerning AM stereophonic broadcasting. In a petition filed on September 26, 1986, TEXAR, Inc. (TEXAR), requests that the Commission initiate a rule making proceeding to select a single system AM stereo transmission standard. In separate petitions filed on November 6, 1986, and December 31, 1986, respectively, Press Broadcasting Company (Press) and Winfield S. Standiford (Standiford) propose that all newly manufactured AM stereo receivers be capable of decoding the AM stereo systems currently in use. Petitioners contend that the Commission's marketplace policy for introduction of AM stereo has not worked and that regulatory intervention now is needed to bring about widespread implementation of this service enhancement. Also before us are two reports prepared by the National Telecommunications and Information Administation (NTIA) concerning stereo broadcasting in the AM radio service. The first report describes the current state of AM stereo broadcasting and its prospects for the future.[1] The second report presents the results of a study evaluating the feasibility of an AM stereo receiver with multi-system capability.[2] In this report, NTIA recommends that the Commission consider protecting the pilot tones of AM stereo systems that have achieved a sufficient degree of market acceptance.[3]

2. After review of these submissions and reports, we conclude that it is neither appropriate nor necessary to now consider either the adoption of an AM stereo standard or protection of the pilot tones of the systems currently in use. As we discuss below, we believe that a substantial degree of convergence has already come about in the market. We also believe that our intervention would be counterproductive since uncertainty and delay would be interjected into a functioning marketplace that appears to be choosing a single AM stereo technical standard. In light of this, we conclude that the potential gains of Commission action would be slight and could be outweighed substantially by the delay and uncertainty created by such action.

BACKGROUND

3. In the 1982 *Report and Order* in Docket No. 21313 (*Report and Order*) [4] authorizing AM stations to offer stereo service, the Commission declined to select a single system standard from among the five competing AM stereo technical systems.[5] Rather, the Commission concluded that it would be more effective and efficient to allow marketplace forces to determine the course of AM stereo development. This, the Commission stated, would provide for maximum flexibility in stereo system design and design improvement.

4. In discussing its decision, the Commission specifically recognized the possibility that no system would be chosen as an industry standard.[6] It observed that this could result from one of several possible causes. The Commission indicated that the most obvious would be if public demand for AM stereo were lacking and consumers were unwilling to pay the added costs of receivers equipped to provide stereo service. In this case, AM stereo would not succeed even if the Commission chose a single system. Another possibility would be that no single system was adopted widely enough to sustain AM stereo in the market. The Commission noted that it would be extremely difficult to distinguish this situation from that where lack of consumer interest would not support even a single system. In this case, the market would be so fragmented that no single system could survive. It indicated that the likelihood of this occurring was remote, as one system could be expected eventually to become dominant as it gained supporters from other systems that dropped out of the market. Finally, the Commission noted that a single system might not be adopted if stations and consumers were reluctant to invest in a system out of concern that it might become obsolete. It indicated that the likelihood of this occurring also would depend on the demand for AM stereo service and the cost of equipment to receive it. On balance, the Commission found nothing in the AM stereo market to differentiate it from other markets where new products are introduced. It therefore stated that "[a] very strong case would have to be made in order to override the inherent benefits of consumers making their own choices rather than having their decisions made by government."[7]

5. Since the adoption of the *Report and Order*, the field of competitors has narrowed such that there are currently only two AM stereo systems being marketed for use by AM radio stations. Of the 4,887 operating AM radio stations, about 10 percent currently broadcast in stereo. According to NTIA's AM stereo status report, three hundred and sixty-eight AM stations use the Motorola C-Quam system and approximately 100 stations employ the Kahn-Hazeltine system.[8] In addition, approximately fifty AM stations broadcast stereo programming using the Harris system which is no longer in production.[9] In this report, NTIA indicates that approximately 70 percent of the AM stations broadcasting in stereo employ the Motorola C-Quam system. In addition, NTIA observes that Australia, Brazil, and, most recently, Canada have adopted C-Quam as their national AM stereo standard and that no country has adopted the KahnHazeltine system. NTIA also notes that Motorola claims that 98 percent of the AM stereo receivers currently available are designed to decode only its C-Quam system. Further, NTIA's data indicate that 100 percent of all AM stereo receivers are C-Quam compatible

(*i. e.*, all AM stereo sets sold are either C-Quam compatible or C-Quam and KahnHazeltine compatible).[10] Analyzing these data NTIA concluded:

> We also note that while C-Quam may not yet be *the* de facto AM stereo standard, it is clear that it is a de facto standard in the sense that whatever the outcome of this competition C-Quam only or multisystem (which would include C-Quam), C-Quam will be part of that standard.[11]

Thus, according to NTIA, there has been convergence towards the C-Quam system.

DISCUSSION

6. Petitioners each submit that the marketplace has not performed as predicted in the *Report and Order*. They argue that it has yet to choose an AM stereo system even five years after the Commission's decision. Petitioners further assert that the existence of two viable, yet incompatible, AM stereo systems has resulted in a stalemate that not only limits the growth of AM stereo, but is detrimental to AM radio in general.[12] As viewed by petitioners, AM stations are reluctant to invest in stereo because they fear choosing the wrong system and because there are few AM stereo receivers available in the market. They contend that manufacturers are reluctant to produce AM stereo receivers due to weak consumer demand, which they claim is attributable to the lack of stations broadcasting in stereo and consumers' unfamiliarity with AM stereo options. Parties contend that these factors have created a cyclical effect whereby each of the players is awaiting action by others before taking the steps needed to further the growth of AM stereo. They argue that only Commission intervention will alter this situation and lead to the growth and success of AM stereo. Petitioners also view Commission action on this matter as a means to reverse the general decline of AM radio.

7. *Single System Standard*. TEXAR, a manufacturer of electronic components for radio and television broadcasting, believes that the purported stalemate would be ended if the Commission were to establish a national technical standard for AM stereo. It contends that this would be a means to accomplish the longstanding goal of encouraging the implementation of AM stereo. Petitioner does not advocate any particular system, only that a single system be chosen by the Commission to overcome the lack of movement which, in its view, characterizes the present situation. TEXAR observes that the rapid convergence to a *de facto* standard once predicted has failed to materialize and is unlikely to do so in the foreseeable future. It submits that the manufacturers of the two remaining systems appear to have the inclination and financial ability to continue to pursue the AM stereo competition for some time and that the likelihood of the market choosing one or the other is so small that it necessitates outside action. Further, TEXAR claims that a stereo standard is not an appropriate instance where free market methods should be applied. To support its position, TEXAR submits an evaluation of the current AM stereo situation using business analysis techniques to demonstrate that the marketplace alone is unlikely to produce a single AM stereo technical standard.

8. We do not believe that it is desirable to revisit the issue of adopting a single technical standard for AM stereo. Petitioner's arguments and presentations do not convince us that Commission intervention at this late date would prove beneficial to the public. Rather, while only ten percent of all AM stations have installed stereo capability, the market is working towards the selection of an industry standard. As indicated above, the field of competitors has narrowed and the majority of stations now choosing to broadcast in stereo seem to be selecting one particular technical system. Thus, there is no indication that the functioning of the marketplace does not reflect the level of AM stereo service desired by the public or that active encouragement of this service feature through mandatory standards setting would be an appropriate way to contribute to the improvement of the economic condition of the AM service.[13]

9. While only 10 percent of AM stations broadcast in stereo, we take note of NTIA's findings regarding the status of the marketplace. NTIA's data suggest that there is no need for immediate government intervention at this time. Indeed, the market appears to be working towards establishing a *de facto* standard. Moreover, it appears to be relatively easy for a station to switch from one AM stereo system to another. Thus, we believe the concern that AM broadcasters are reluctant to invest in stereo equipment because of the risk involved in choosing a system other than the one which eventually becomes the industry standard is unfounded. According to a study by Besen and Johnson, the cost of converting an AM radio station to stereo can run as high as75,000. However, once an AM station is broadcasting in stereo, the conversion from one system to another generally involves only the replacement of the exciter at a cost ranging from10,000 to12,000. In addition, AM stereo system manufacturers offer broadcasters lease option plans that would reduce the cost of an incorrect choice.[14] Accordingly, we conclude that the rate at which broadcasters have chosen to install AM stereo capability cannot be attributed to our decision to not establish mandatory industry standards.

10. We also observe that intervention by the Commission to consider adoption of a single system standard likely would prove counterproductive and detrimental to the development of AM stereo broadcasting. If the first AM stereo proceeding is a guide, action by the Commission to select an AM stereo standard would be a lengthy process. Given the complexity of the issues and the strong interests of the competing parties, any decision made by the Commission probably would be followed by requests for reconsiderations and subsequent appellate litigation. During the course of such proceedings, the AM stereo market would be subject to a further uncertainty that would delay the introduction of service into the market. After all of this administrative delay, there still would be no guarantee that the standard selected would be any better than one the marketplace might choose. Thus, action by the Commission to choose an AM stereo standard would be expected to hinder, rather than promote, development of this service feature and would not benefit the industry or the public as petitioner predicts.

11. We also believe, consistent with Section 7(a) of the Communications Act of 1934, as amended,[15] that it serves the public interest to provide an environment for development of technological change that is unfettered by federal regulation. As the Commission stated in the *Report and Order*, the marketplace policy provides a regulatory envi-

ronment that provides opportunities for development and introduction of new and improved technologies which will benefit the public. Free and open competition promotes the development of new systems and products, provides incentives for manufacturers to continue to improve existing systems, and encourages cost efficiency. Consistent with this position, we see no reason to withdraw or retract any of the type acceptances we have granted for use of the existing AM stereo systems and will continue to grant type acceptances for use of new techniques that otherwise comply with our rules.[16]

12. *Multi - system Capability*. Press and Standiford believe that we should mandate that all AM stereo receivers be manufactured with multi-system capability to automatically distinguish between and decode all of the available AM stereo transmission systems.[17] Press Broadcasting, an AM stereo broadcaster operating the Motorola C-Quam system, submits that the Commission correctly allowed the marketplace to narrow the number of available stereo systems. It contends that the Commission now should insure the success of AM stereo by requiring radio manufacturers to use AM stereo technology capable of receiving and delivering both the Motorola C-Quam and Kahn-Hazeltine AM stereo systems. Press states that this requirement would eliminate the problem confronting consumers with respect to which receiver to purchase. It observes that a multi-system "chip" already exists that can distinguish automatically between the two systems and translate each system for delivery by the receiver. Press also states that this proposal is pro-consumer and pro- marketplace because it would permit consumers and broadcasters to freely choose between the two AM stereo transmission systems without risk that equipment would be rendered unusable.

13. Standiford proposes that any AM stereo radio or AM stereo radio tuner manufactured for sale in this country after June 1, 1989, be required to be equipped to detect and automatically decode all AM stereo transmission systems currently in use by radio stations.[18] He further proposes that every AMFM radio or tuner with stereo capability be required to provide that capability for both AM and FM signals. Standiford argues that the economic condition of many AM broadcast stations is getting worse and that introduction of stereo service will help them to become more competitive with FM stations. He argues that there is no longer time to wait for the marketplace to decide which system will become dominant, nor is there time for the Commission to select a standard. He states that the marketplace approach is as valid today as it was previously, but believes that the current circumstances necessitate some Commission action. Standiford argues that the fastest way to encourage large numbers of AM radio stations to install and operate stereo capability is to require multi-system receivers. He submits that this will provide stations with freedom to choose the stereo system that will sound best on the air under their particular circumstances.

14. We do not agree with Press and Standiford that it is appropriate to initiate a rule making proceeding to consider requiring all AM stereo radios to have multi-system capability. Nor do we believe it is desirable to consider Standiford's proposal to require AMFM receivers with stereo capability to provide that capability for both AM and FM signals. Stereo is an optional, not required, service enhancement for AM radio stations. AM stations that choose to broadcast in stereo do so at their own discretion based on their determinations of what is most appropriate for their markets. Consistent with our general policy of limiting our regulatory role regarding broadcast service enhancements, we find no compelling need to establish receiver requirements for AM stereo capability. To do so would place unnecessary regulatory burdens on receiver manufacturers that are likely to be costly to both manufacturers and the public.

15. In its study investigating the feasibility of an AM stereo receiver with a multi-system chip capable of decoding the Motorola and KahnHazeltine systems, NTIA found that an automatic multi-system receiver is technically feasible, but unlikely to be viable for practical reasons. NTIA based its conclusion on several factors: 1) the apparent lack of industry interest in manufacturing multi-system receivers; 2) the implementation delays which would occur even if the industry were to move in the direction of multi-system receiver production; and, 3) the continued trend towards a single system standard internationally.[19] We believe that if there is a consumer need for multi-system receivers, there will be an incentive for manufacturers to produce them. As with the case of selecting a single technical standard, a marketplace approach is the most effective and expeditious means to accomplish greater availability of AM stereo receivers. Accordingly, we will not initiate a proceeding to consider requiring that AM stereo receivers incorporate multi-system stereo capability or that AMFM receivers with stereo capability provide that capability to both AM and FM signals.

16. *Pilot Tone Protection*. As mentioned above, NTIA recommends that the Commission protect the pilot tones of AM stereo systems which receive substantial consumer acceptance. In a previous action, we considered the desirability of pilot tone protection (*i. e.*, establishing technical standards which would restrict the use of pilot frequencies to those stations employing the associated stereo systems) and concluded that such action was not warranted.[20] In light of NTIA's suggestion, we have reviewed our reasoning in that case, and we remain unpersuaded that such action is warranted.

17. Protection of pilot tones may be a desirable regulatory action in some situations. As we found in the case of television stereo, for example, it may be useful when a new service is first introduced.[21] Protection of pilot tones, in such cases, may aid in the convergence upon a standard without needlessly foreclosing other technologies. However, as NTIA observed, a substantial amount of convergence has already occurred in this instance. Only two of the original five systems remain, and *all* AM stereo receivers are capable of demodulating one of these. Given the trend towards convergence, the benefits of pilot tone protection are much less here than they were in the case of television stereo. Furthermore, there may be substantial disadvantages associated with establishing pilot protection at this time.

18. Stations considering the selection of an AM stereo system are likely to be influenced in their decision by any pilot protection rules that we might adopt. However, establishing eligibility criteria for pilot protection and defining the relevant technical standards could be accomplished only in a rule making proceeding. The uncertainty and delay of further proceedings could thus discourage broadcasters, manufacturers, and listeners from investing in AM stereo in the interim, thereby hindering its development.

19. In the context of non-broadcast use of AM subchannels, we also considered whether there was any need to protect AM stereo pilots in order to ensure signal quality, and concluded that broadcasters have strong incentives to protect their transmissions.[22] Because improper pilot frequency use can impair only the quality of the stations involved, stations thus have a strong self-interest in making appropriate use of AM stereo pilots. Absent any information to suggest that market incentives are insufficient to promote the public interest, we do not find it necessary to reexamine our decision to decline to protect the pilot tones of AM stereo systems.[23]

20. Accordingly, IT IS ORDERED that the petitions for rule making filed by TEXAR, Inc., Press Broadcasting Company, and Winfield S. Standiford ARE DENIED.

21. This action is taken pursuant to authority contained in Section 1.401(e) of the Commission's rules and Sections 4(i) and 303 of the Communications Act of 1934, as amended.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster III
Acting Secretary

FOOTNOTES

[1] *See* "AM Stereo and the Future of AM Stereo," National Telecommunications and Information Administration, U.S. Department of Commerce, February 1987 (February NTIA Report).

[2] *See* "AM Stereo and Multi-system Compatibility," National Telecommunications and Information Administration, U.S. Department of Commerce, August 1987 (August NTIA Report).

[3] A pilot tone is a fixed frequency signal that a station transmits when it is broadcasting stereophonic programming. When this signal is detected by a receiver capable of both monophonic and stereophonic operation, the pilot tone locks the receiver in the stereo mode.

[4] *See Report and Order* in Docket No. 21313, adopted March 4, 1982, 47 FR 13152.

[5] The developers of these AM stereo systems were Belar Electronics Corp., Harris Corporation, Kahn Communications, Inc.Hazeltine Corporation, Magnavox Corporation, and Motorola Corporation. After evaluating the available data, the Commission found that each of the five systems considered was technologically acceptable, but none was significantly superior to the others.

[6] *See Report and Order*, *supra*, at para. 54.

[7] *Id.*, at para. 56.

[8] *See* February NTIA Report, *supra*, p. 10.

[9] *See* Standiford petition, p. 2.

[10] *See* February NTIA Report, *supra*, p. 19. *See also* August NTIA Report, *supra*, p. 17.

[11] *See* August NTIA Report, *supra*, p. 3.

[12] For example, in its petition, TEXAR states that many stations have postponed technical capital improvements until they can be implemented in conjunction with AM stereo.

[13] We disagree that government intervention to foster development of AM stereo is appropriate to buttress the AM service at this time. With regard to AM service in general, it is our goal to free AM broadcasters from unnecessary contraints in order to allow them to meet the competitive challenges facing them and thereby to enhance their service to the public. This objective is as appropriate here as it is in other areas where rule changes are being considered. *See* "Report on the Status of the AM Broadcast Rules," submitted to the Commission by the Mass Media Bureau, April 3, 1986.

[14] *See* "Compatibility Standards, Competition, and Innovation in the Broadcasting Industry," Stanley M. Besen and Leland L. Johnson, The RAND Corporation, R-3453-NSF, November 1986.

[15] *See* 47 U.S.C. § 157(a).

[16] *See* , for example, 47 CFR §§ 73.128 and 73.1545.

[17] Both petitioners cite the all-channel television set requirement as precedents for this type of Commission action.

[18] Standiford requests that the Commission either adopt rules or recommend legislation to Congress to implement his proposal.

[19] *See* August NTIA Report, *supra*.

[20] *See Report* and Ord er in MM Docket No. 83-1322, adopted June 27, 1984, 100 FCC 2d 5, 49 FR 34011.

[21] See Second Report and Order in Docket No. 21323, adopted March 29, 1984, 49 FR 18100.

[22] See Report and Order in MM Docket No. 83-1322, supra.

[23] We recognize that the public has not had an opportunity to comment on the specifics of the NTIA recommendations, however. Therefore, any comments brought to our attention on reconsideration that bear on our analysis will be considered.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 86-510

In re Applications of

Ramon Rodriquez *et al.* dba RAMON RODRIGUEZ & ASSOCIATES Lajas, Puerto Rico	File No. BPH-821208AA
WESTCOM CORPORATION Lajas, Puerto Rico	File No. BPH-830420AC
Carmen B. Rodriguez and Frederick Gauthier De Castro dba FM MINORITY BROADCASTING Lajas, Puerto Rico	File No. BPH-830420AK
DAVID ORTIZ RADIO CORPORATION Lajas, Puerto Rico	File No. BPH-830722AL

for Construction Permit for a New FM Broadcast Station

MEMORANDUM OPINION AND ORDER

Adopted: December 21, 1987; Released: January 28, 1988

By the Commission:

1. Before the Commission is: (1) a "Petition for Reconsideration of Hearing Designation Order" filed February 27, 1987 by David Ortiz Radio Corporation; (2) an "Opposition to Petition for Reconsideration of Hearing Designation Order" filed March 6, 1987 by Ramon Rodriquez & Associates; (3) an "Opposition to Petition for Reconsideration of Hearing Designation Order filed March 20, 1987 by the Mass Media Bureau; (4) an "Opposition of Bonet Associates to Petition for Reconsideration of Hearing Designation Order" filed March 23, 1987; and (5) a "Reply to Opposition to Petition for Reconsideration" filed March 24, 1987 by Ortiz. Ortiz seeks reconsideration of *Hearing Designation Order*, 2 FCC Rcd 465 (1987), in this comparative licensing proceeding. The application of Ortiz for a new FM station to serve Lajas, Puerto Rico on Channel 279B was dismissed in that hearing designation order, and the applications of Rodriquez, Bonet and FM Minority Broadcasting were set for comparative hearing.[1]

BACKGROUND

2. Briefly, the relevant facts surrounding allocation of Channel 279B to Lajas, Puerto Rico and their import on the filing of the applications in this procceding are as follows. In July 1982, when Channel 279B was allocated to Lajas, 47 C.F.R. § 73.203(b) provided that a "channel assigned to a community listed in the Table of Assignments is available upon application in any unlisted community which is located within . . . 15 miles if the channel is a class BC channel . . . ." This provision, known as the "15-mile rule," was subsequently deleted in *Suburban Community Policy*, 93 F.C.C.2d 436 (1983). In the Channel 279B allocation order, *Report and Order* (*BC Docket No. 80 - 520)*, 47 FR 30981, 51 RR 2d 1329 (1982), *recon. denied*, *Memorandum Opinion and Order*, MM 546, released November 2, 1983, the Mass Media Bureau stated:

> The assignment of Channel 279 to either Lajas or Cabo Rojo is subject to the provisions of § 73.203(b) of the Commission's rules, the 15 mile rule. The two communities are within 15 miles and neither has an FM assignment. Thus, it does not matter where the assignment is made for licensing purposes since all Cabo Rojo applicants can apply for a Lajas channel assignment and vice versa. In view of that fact we have not undertaken a comparative analysis of the communities nor have we asked for additional filings pertaining to this question. From an allocations standpoint, we have chosen Lajas as the community to designate for the assignment on the basis that it has no local aural service at present. The place of assignment, however, as we have stated should have no bearing on the place to be licensed should other cities within 15 miles such as Cabo Rojo, be specified.

51 RR 2d at 1340. This was in error. It turns out that Cabo Rojo, Puerto Rico was already listed as the community for Channel 221A and, therefore, section 73.203(b) did not apply.

3. In August 1982, apparently unaware of the Mass Media Bureau's error, Ortiz submitted an application for Channel 279B designating Cabo Rojo as its community of license. This application was returned as unacceptable for filing in October 1982 by the Chief of the FM Branch of the Bureau because Channel 221A was listed for Cabo Rojo and the 15-mile rule was therefore inapplicable. On November 30, 1982, Ortiz filed a second application for Channel 279B, this time specifying Lajas as the community of license. In March 1983, Ortiz took two actions as the result of its belief that there was a problem with regard to the second application's compliance with the Commission's engineering rules. (Ortiz evidently believed that its application would not meet the Commission's coverage requirement for Lajas.) First, on March 3, 1983, Ortiz filed a request for Rule Making seeking reassignment of Channel 279B to Cabo Rojo. (The Rule Making request was subsequently denied.) Second, by letter of March 8, 1983, Ortiz requested that its Lajas application be dismissed. In spite of this request, the Lajas application was placed on an "A" cut-off list.[2] This list announced the

acceptance of Ortiz's application and specified an "A" date of April 20, 1983 for the filing of mutually exclusive applications for Channel 279B at Lajas. *Public Notice*, Report No. A-60 (released March 16, 1983). On April 20, 1983, Bonet and Minority filed applications for Channel 279B specifying Lajas as the community of license. In the interim, however, the Bureau dismissed Ortiz's application but did not recind the *Public Notice* announcing the acceptance by the Commission of that application and the establishment of the "A" cut-off date for the filing of mutually exclusive applications in this proceeding.

4. Shortly after Ortiz filed its first application for Cabo Rojo but before filing its second application, Rodriquez also filed an application for Channel 279B to serve Cabo Rojo. Unlike Ortiz's first application, Rodriquez's application was not dismissed. It was, instead, inadvertently accepted for filing by the Bureau and was erroneously given an "A" cut-off date of July 14, 1983. *Public Notice*, Report No. A-63 (released June 13, 1983). The Bureau thereafter realized its error and issued an *Erratum* recinding the July 14, 1983 cut-off date with respect to Rodriguez's Cabo Rojo application. *Public Notice*, Report No. A-63A (released June 22, 1983). Upon learning of the filing of that application, Ortiz filed its third application. This application again specified Cabo Rojo as the community of license and was accompanied by a petition for waiver of the 15-mile rule and for waiver of the cut-off rules. Nearly two years later, the Bureau conditionally accepted the applications of Rodriguez and Ortiz for Cabo Rojo and the applications Bonet and Minority for Lajas. *Public Notice*, Report No. B-62 (released May 31, 1985). The notice stated that the acceptance ". . . is conditional because extensive pleadings have been filed challenging use of this Channel [279B] in Cabo Rojo. Thus, in order to place some or all of the applications in a posture where they may be designated for hearing when the Commission rules on the pleadings, we are establishing this 'B§ cut-off date." On the "B" date (that is, the deadline for filing amendments as of right), Ortiz amended its application to specify Lajas as its community of license. This amendment mooted Ortiz's request for waiver of the 15-mile rule.

5. In the *HDO*, the Chief of the Audio Services Division of the Bureau, acting pursuant to delegated authority, found that Ortiz had not presented a showing sufficient to warrant waiver of the cut-off date. He also found that Ortiz's tardiness was attributable to its conduct and not to circumstances beyond its control. In addition, he suggested that Ortiz could have taken several courses of action which would have brought the problem to the Commission's attention earlier and that some equitable relief could have been fashioned without contravening the cut-off rules (that is, Ortiz could have sought reconsideration of the staff dismissal of its first application or it could have sought waivers instead of dismissing its Lajas application on March 8, 1983). On the other hand, Rodriguez's application was accepted and it was placed in the hearing. To do otherwise, the *HDO* indicated, would have prejudiced Rodriguez "who relied to his detriment on erroneous data furnished in the Rule Making allocation order. *HDO*, 2 FCC Rcd at 470. Acceptance of Rodriguez's application was conditioned on Rodriguez's amending its proposed community of license to Lajas. Rodriguez complied with the condition.

Petition for Reconsideration and Related Pleadings

6. Ortiz asserts that there are compelling reasons to waive the cut-off date and accept its application for inclusion in the comparative hearing. It claims: that there was confusion surrounding the original allocation (that is, Lajas *or* Cabo Rojo); that it relied in good faith on the Bureau's determination that an application for Cabo Rojo was unacceptable -- yet Rodriguez's Cabo Rojo application was accepted -- thus illegally denying Ortiz equal treatment in an similar situation; that the public interest would be served by a greater number of applicants; that the other applicants would not be prejudiced since it was the Ortiz application which generated the April 20, 1983 cut-off date (that is, the other applicants -- Bonet and Minority -- filed their applications with full knowledge of the Ortiz application and the expectation that they would be mutually exclusive with Ortiz); and that Ortiz was a petitioner in the original Channel 279B Rule Making and, upon allocation of the channel, Ortiz was the first filed applicant.[3]

7. In opposition, Rodriguez acknowledges the procedural errors in this proceeding, but contends that the mistakes which ultimately led to Ortiz's dismissal were of its own making. Rodriquez claims that Ortiz twice failed to preserve its rights. Ortiz never sought reinstatement of its original Cabo Rojo application within the time available to do so, nor did Ortiz have any application on file on the "A" cut off date of April 20, 1983.[4] Rodriguez also argues, as does the Bureau, that the Commission's cut-off rules are strictly enforced and waivers are granted only in extreme cases involving unusual and compelling circumstances. Both believe that such circumstances do not exist in the instant situation. Bonet also supports these contentions.

DISCUSSION

8. We will reinstate Ortiz's application and order its consolidation herein. A number of errors committed by the Bureau have caused confusion for the applicants in this proceeding. Most importantly, the Bureau admits that it "may have acted inconsistently in returning Ortiz§ original Cabo Rojo application and subsequently accepting that of Rodriguez . . . ." *HDO*, 2 FCC Rcd at 470. On the other hand, the Bureau also attempted in the *HDO* to distinguish Ortiz's situation from that of Rodriquez and concluded that "the present necessity for waiver of the cut-off rules was largely occasioned by Ortiz§ own conduct and was not due to circumstances beyond [its] control." *Id.*

9. Resolution of this matter is controlled by *Melody Music, Inc. v. FCC*, 345 F.2d 730 (D.C. Cir. 1965), which broadly sets out the Commission's obligation to assure comparable treatment of similarly situated parties. Here, Rodriquez relied on erroneous data furnished by the Commission in the Channel 279B allocation order, and its application was set for hearing. Ortiz relied on the same erroneous data, yet its application was dismissed. We are unable to discern a persuasive factual distinction between Ortiz's and Rodriquez's situation that would be sufficient to warrant such disparate treatment. *See Public Media Center v. FCC*, 587 F.2d 1322 (D.C. Cir. 1978); *George T. Heinreich (KAIT - TV)*, 72 FCC 2d 511 (1979). Therefore, we conclude that Ortiz's petition for reconsideration and its associated request for waiver of the cut-off rules should

be granted, and that Ortiz's application should be consolidated with the previously accepted applications for a full evidentiary hearing in this proceeding.

10. ACCORDINGLY, IT IS ORDERED, That the Petition for Reconsideration of Hearing Designation Order filed February 27, 1987 and the request for waiver filed July 22, 1983 by David Ortiz Radio Corporation ARE GRANTED and the April 20, 1983 cut-off date as applied to David Ortiz Radio Corporation IS WAIVED.

11. IT IS FURTHER ORDERED, That the application (File No. BPH-830722AL) of David Ortiz Radio Corporation IS REINSTATED and CONSOLIDATED in this proceeding.

12. IT IS FURTHER ORDERED, That the Order released August 4, 1984 (FCC 87-247) staying the hearing proceedings in this case is VACATED.

FEDERAL COMMUNICATIONS COMMISSION

William J. Tricarico
Secretary

FOOTNOTES

[1] Thereafter, by Order released August 4, 1987 (FCC 87-249), the hearing proceedings were stayed by the Commission.

[2] At that time 47 C.F.R. § 73.3573 provided a two step cut-off procedure. An "A" list was published noting that certain "A" applications were accepted for filing. Mutually exclusive applications and petitions to deny the "A applications had to be filed by the published "A" cut-off date. Any such mutually exclusive applications were called "B" applications. The "B applications were then put on a "B" cut-off list. Petitions to deny the "B applications and amendments thereto were required to be filed by the "B" cut- off date.

[3] Ortiz also contends that the April 20, 1983 "A" cut-off date should be declared void from its inception. In view of the action herein taken, it is unnecessary to consider this contention.

[4] Rodriguez also believes, based on *Walter Lane Harber*, 45 RR 2d 1312 (Broadcast Bur. 1979) and *Public Communicators, Inc.*, 54 FCC 2d 329 (1975), that Ortiz's late effort to retender a Cabo Rojo application and request waiver of the rules is not valid where no petition for reconsideration of the first Cabo Rojo application was filed. Rodriguez's argument misses the point. Here, Ortiz seeks reconsideration of the dismissal of its third application in the HDO, and Ortiz's petition for reconsideration was timely filed as to that ruling.

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: January 28, 1988

ADVISORY COMMITTEE ON ADVANCED TELEVISION SERVICE IMPLEMENTATION SUBCOMMITTEE

1. The first meeting of the Implementation Subcommittee of the FCC Advisory Committee on Advanced Television Service will be held on:

February 11, 1988
1:00 p.m.
Commission Meeting Room (Room 856)
1919 M Street, N.W. Washington, D.C. 20554

2. The agenda for the first meeting will consist of:

a. Introductory Remarks
b. Objectives and Organization
c. Administrative Matters
d. Working Party 1 -- Policy and Regulation
e. Working Party 2 -- Transition Scenarios
f. Other Business
g. Date and Location of Next Meeting
h. Adjournment

3. All interested persons are invited to attend.

4. Those interested may also submit written statements at the time of the meeting. Oral statements and discussion will be permitted under the direction of the Subcommittee Chairman.

5. Any questions regarding this meeting should be directed to the Implementations Subcommittee Chairman, Dr. James J. Tietjen at (609) 734-2237, or Mr. Steve Bailey at (202) 632-7793.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

MCI
Telecommunications
Corporation,
Complainant,

v. File No. E-87-60

GTE California
Incorporated,[1]
Defendant.

ORDER

Adopted January 19, 1988; Released January 27, 1988

By the Deputy Chief, Enforcement Division, Common Carrier Bureau:

1. On May 18, 1987, MCI Telecommunications Corporation (MCI) filed a complaint against GTE California Incorporated (GTE) pursuant to Sections 201-205 and 207-209 of the Communications Act, 47 U.S.C. §§ 201-205, 207-209, alleging that GTE unlawfully failed to provide MCI unrestricted interstate WATS access lines capable of carrying intrastate traffic. GTE had maintained that it was caught between conflicting mandates of the federal government and the State of California. It argued that the California Public Utilities Commission (CPUC) required GTE to ensure that interstate WATS access service did not carry intrastate traffic. However, GTE notified the Commission that on August 12, 1987, the CPUC issued a resolution that permitted such traffic. Therefore, on August 17, 1987, GTE removed all restrictions on the provision of bijurisdictional WATS access from its interstate access tariff in California. Subsequently, by letter dated January 13, 1988, MCI requested that the Commission dismiss the complaint. Because no matters remain in controversy, we will grant MCI's request to withdraw the complaint.

2. Accordingly, IT IS ORDERED, pursuant to authority delegated by Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, that the complaint filed by MCI Communications Corporation IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Howard M. Wilchins
Deputy Chief, Enforcement Division
Common Carrier Bureau

FOOTNOTES

[1] Formerly General Telephone Company of California.

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 86-79

In the Matter of

Furnishing of Customer Premises
Equipment by the Bell Operating
Telephone Companies and the
Independent Telephone Companies

ORDER

Adopted: December 29, 1987; Released: December 30, 1987

By the Chief, Common Carrier Bureau:

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I. INTRODUCTION

1. In the *BOC CPE Order*,[1] the Commission relieved the Bell Operating Companies (BOCs) of the structural separation requirements governing their provision of customer premises equipment (CPE) and replaced those requirements with nonstructural safeguards. The Commission required the BOCs to submit plans describing how they would comply with certain of these safeguards and delegated authority to the Chief of the Common Carrier Bureau (the Bureau) to review the plans.[2]

2. On April 13, 1987, the BOCs [3] filed their compliance plans.[4] In response to our public notice requesting comment on the plans, the International Communications Association (ICA), the North American Telecommunications Association (NATA), and the Independent Data Communications Manufacturers Association (IDCMA) filed comments, and all of the BOCs except Southwestern Bell filed reply comments. After review of the record, we approve each of the BOC's plans for using customer proprietary network information (CPNI), but require that the BOCs supplement or modify these plans in certain respects. We also approve, subject to minor modifications, each of the BOC's plans for provision of nondiscriminatory installation and maintenance service. In addition, while we reject the service categories proposed by the BOCs in their compliance plans for installation reporting, we approve with one minor change the revised categories proposed by the BOCs in *ex parte* filings, and we require each BOC to amend its compliance plan to incorporate these revised categories. Finally, we approve on a trial basis all BOC plans but that of PacTel for satisfying the requirement that BOCs provide meaningful joint marketing opportunities to independent CPE vendors (the joint marketing requirement). Each of the approved joint marketing plans will be subject to a reassessment in two years, at which time we will consider whether modifications should be required or permitted to any of them. We reject PacTel's plan for satisfying the joint marketing requirement, and require it to file an amended joint marketing plan with us by February 15, 1988. PacTel's amended plan must include a sales agency program similar to that of one of the other BOCs, or its functional equivalent, in conjunction with or as a substitute for its present plan.[5]

II. BACKGROUND

3. The Commission adopted the *BOC CPE Order* on November 18, 1986, establishing a new regulatory framework to govern BOC participation in the CPE market. Specifically, the Commission replaced the structural separation requirements of the *Second Computer Inquiry* [6] with nonstructural safeguards for the BOCs' provision of CPE. The Commission found that structural separation imposed substantial costs on the BOCs by preventing them from organizing their businesses in an efficient manner and that nonstructural safeguards could effectively check the potential abuses that the structural separation requirements were designed to prevent - the improper shifting of costs from the BOCs' unregulated activities to their regulated operations and discrimination by the BOCs against their CPE competitors and their CPE competitors' customers.

4. The nonstructural safeguards adopted by the Commission to replace structural separation covered five areas: cost allocation, network disclosure, CPNI, nondiscrimination, and joint marketing. The cost allocation and accounting rules were established in the *Joint Cost Order*.[7] The network disclosure rules require the BOCs to disclose to their CPE competitors and the public information concerning changes in the network affecting CPE interconnection.[8] CPNI rules require the BOCs to notify multiline business customers annually of their CPNI rights, and, upon request of a customer, either to withhold the customer's CPNI from their own CPE personnel, or to disclose such information to independent CPE vendors. The Commission also required the BOCs to make nonproprietary, aggregated CPNI available to independent CPE vendors to the extent that, and on the same terms as, such information is made available to the BOCs' own CPE personnel. The nondiscrimination rules are designed to prevent the BOCs from discriminating in their provision of network services in favor of their own CPE customers. Under these rules, the BOCs must (a) retain their Centralized Operations Groups (COGs) as optional points of contact for the CPE vendor community and customers with non-BOC CPE, and (b) file quarterly reports on the timeliness of their provision of installation and maintenance of network services to customers with BOC and non-BOC CPE. Finally, the Commission adopted the requirement that BOCs provide independent CPE vendors with a meaningful opportunity to market CPE jointly with Centrex and other BOC network services.

5. The Commission required each BOC to file a plan specifying the procedures by which it would satisfy the CPNI, nondiscrimination, and joint marketing requirements.[9] In addition, it required the BOCs to file a cost allocation manual demonstrating compliance with the cost allocation and accounting rules adopted in the *Joint Cost Order*.[10] Each BOC remains subject to the structural separation requirements until both its compliance plan and its cost allocation manual are approved.

6. Several parties petitioned for reconsideration of various aspects of the nonstructural safeguards established in the *BOC CPE Order*. In the *Reconsideration Order*, the Commission denied petitions to modify or eliminate the network disclosure, CPNI, and joint marketing safeguards.[11] However, the Commission modified the nondiscrimination rules by eliminating mandatory maintenance reporting. The Commission found that in light of the evidence in the record concerning the BOCs' internal maintenance procedures, there is little likelihood that the BOCs can or will discriminate on the basis of a customer's CPE vendor in maintaining network services, and that preparation of the required reports would be problematic and perhaps even counterproductive.[12] Therefore, the Commission established, as an alternative to maintenance reporting, a requirement that each BOC file an annual affidavit, signed by the BOC officer responsible for the BOC's maintenance operations, attesting that the BOC has followed the maintenance procedures that it has described in its compliance plan filings, and that the company has not, in fact, discriminated in providing network maintenance on the basis of a customer's CPE vendor.[13]

III. USE OF CPNI

A. The CPNI Safeguard

7. As noted above, the Commission adopted a number of interrelated requirements with respect to the BOCs' use of CPNI.[14] First, the BOCs must limit the access of their CPE personnel to a customer's CPNI if that customer so requests. Second, the BOCs must make CPNI available, upon customer request, to competing CPE vendors on the same terms and conditions upon which it is available to BOC CPE personnel. Third, the BOCs must notify multiline business customers annually of the CPNI safeguards established in the *BOC CPE Order*. Fourth, the BOCs must make nonproprietary, aggregated CPNI available to independent CPE vendors to the extent that, and on the same terms as, it is made available to the BOCs' own CPE personnel. These requirements are intended to minimize any unfair advantage that the BOCs may gain over their CPE competitors by virtue of their access to a customer's CPNI, while preserving both the customer's right to control the use of its CPNI and the BOCs' ability to offer integrated marketing of CPE and network services in an efficient manner.[15]

B. BOC Plans for Complying with the CPNI Requirements

1. *Release of CPNI to Independent CPE Vendors*

8. NYNEX, BellSouth, PacTel, and Ameritech state that, upon a customer's written request, they will make the customer's CPNI available to independent CPE vendors, and that they will do so on the same terms on which it is available to their own CPE personnel.[16] Bell Atlantic, Southwestern Bell, and US West also indicate that they will honor customers' requests for the release of CPNI to independent CPE vendors, but these BOCs limit their commitment to multiline business customers.[17] All of the BOCs state that they will continue processing CPNI requests by independent vendors through their COGs and/or business offices, and that they will retain existing procedures for the filing and processing of such requests.

2. *Restricting BOC CPE Personnel From Access to CPNI*

9. All of the BOCs also state that, on a customer's request, they will restrict their CPE personnel from accessing such customer's CPNI. Bell Atlantic, Southwestern Bell, PacTel, and US West, however, limit their commitment in this regard to multiline business customers.[18] BellSouth, Ameritech, Southwestern Bell, and US West state that they will handle requests for restricted treatment of CPNI by locating CPNI records in data bases that can only be accessed by presentation of a special user code that will not be available to CPE personnel.[19] Bell Atlantic and PacTel propose to handle such requests by noting them on their internal files containing CPNI and by instructing their CPE employees not to use such files in marketing CPE.[20] NYNEX will initially make CPNI available to CPE personnel through a distribution medium, such as hard copy or magnetic tape, that provides means for excluding restricted CPNI. It will also note any restrictions on customers' data base records and instruct CPE employees not to use restricted records for CPE marketing.[21]

3. Content of Notice

10. All of the BOCs, except NYNEX, also state that they will notify multiline business customers annually of the BOCs' CPNI obligations. While NYNEX states that it will notify multiline business customers annually of their right to restrict use of their CPNI by NYNEX CPE personnel, it does not state that its notice will also inform such customers that they may require release of their CPNI to independent CPE vendors.

4. Response Form

11. NYNEX states that it will provide customers with a pre-addressed postcard that they may use to request restricted treatment of their CPNI.[22] None of the other BOCs indicates whether it will provide a response form with its CPNI notice.

5. Timing of Initial Notice

12. NYNEX states that it will provide its initial notice of CPNI rights "when it receives word" that its compliance plan has been approved.[23] Bell Atlantic states that it will provide its initial notice by January 1, 1988.[24] Ameritech states that it will send its initial notice within four to six months after approval of its compliance plan.[25] The other BOCs do not indicate when they will mail their initial notices.

6. Aggregated CPNI

13. Five of the BOCs - NYNEX, BellSouth, Southwestern Bell, PacTel, and US West - state that they will make nonproprietary, aggregated CPNI available to independent CPE vendors, to the extent that, and on the same terms as, such information is made available to their own CPE personnel. Bell Atlantic and Ameritech do not discuss their proposed treatment of aggregated CPNI in their compliance plans.

C. Positionsof the Parties

14. Only ICA filed comments on the BOCs' proposals for treatment of CPNI. ICA criticizes the BOCs' CPNI plans in two respects, discussed below.

1. Uniform Notification Date

15. ICA faults the plans because they fail to provide for a uniform date on which all multiline business customers in all regions will be notified of their CPNI rights.[26] ICA claims that varying notification dates would make it administratively difficult for customers with multiple offices to monitor receipt of notices and ensure that responses are returned in timely fashion.

16. BellSouth, Ameritech, US West, and PacTel strongly oppose ICA's request that we establish a uniform notification date.[27] They dispute ICA's claim that different notification dates will pose an administrative burden to customers with multiple offices. US West and PacTel assert that multiregional customers are accustomed to dealing with various forms of notification in other contexts and that such customers are large and sophisticated enough to monitor their mail effectively without undue cost. Ameritech states that any customer that wishes to restrict its CPNI can do so even before receiving formal notice and thereby avoid any inconvenience that might stem from varying notice dates.

17. BellSouth and US West also argue that a single notification date for all BOCs would be costly and inefficient. They argue that each BOC should be able to proceed with implementation of its compliance plan at its own pace, and that a uniform notification date would require some BOCs to accelerate development of their notification mailing and tracking procedures and others to delay it.[28] US West also states that uniform notification dates would preclude BOCs from notifying customers of their CPNI rights through a billing insert.[29]

2. Initial Customer Response Period

18. ICA also criticizes the BOCs' CPNI plans for failing to specify how much time customers will be given to respond to these notices before their CPNI will be released to BOC CPE personnel.[30]

19. BellSouth, Ameritech, PacTel, US West, and NYNEX dispute ICA's claim that the CPNI plans are defective for failing to specify the initial response time for multiline business customers.[31] NYNEX states that its customers will have at least thirty days to respond to the notice, while BellSouth and Ameritech state that their customers will have a reasonable time to respond.[32] BellSouth further states that if the Bureau does establish a minimum response period, that period should be no longer than one billing cycle.[33] Finally, PacTel argues that customers would not be substantially harmed even if their CPNI were released to a BOC's CPE personnel prior to receipt of the customers' requests for confidential treatment, because the BOC's CPE personnel would cease using the CPNI after the request was received.[34]

D. Discussion

20. All of the BOCs' plans for treatment of CPNI comply substantially with the requirements established in the *BOC CPE Order*. However, each of the plans is incomplete in at least one respect. Because these omissions are relatively minor, we decline to reject the CPNI plans in their entirety. Rather, we approve each BOC's CPNI plan, provided that within fourteen days after publication of a summary of this Order in the Federal Register, it files with the Bureau amendments to its plan in accordance with the applicable requirements stated below.

1. Applicability of CPNI Rules

21. Bell Atlantic, Southwestern Bell, and US West indicate that their procedures for processing customer requests for the release of CPNI to independent CPE vendors are limited to multiline business customers. These three BOCs, as well as PacTel, also appear to limit to multiline business customers the opportunity to restrict BOC CPE personnel from access to CPNI. While the notification requirements of the *BOC CPE Order* do indeed apply only to multiline business customers, the rules concerning release and restriction of CPNI apply to all customers – multiline business, single line business, and residential. Regardless of whether a BOC has sent a customer notice of its CPNI rights, the BOC must honor a request by that customer for the release of its CPNI to designated CPE vendors and/or the restriction of its CPNI from BOC CPE personnel. Accordingly, we require Bell Atlantic, Southwestern Bell, US West, and PacTel to amend their compliance plans to state that the procedures they describe for releasing and restricting customers' CPNI apply to all customers.

2. *Content of Notice*

22. NYNEX does not indicate that it will notify multiline business customers of their right to authorize release of their CPNI to independent CPE vendors. Direct notification by each BOC is the most efficient way to inform customers of this important component of their CPNI rights. We thus require NYNEX to amend its plan to state that it will notify all multiline business customers of their right to authorize release of their CPNI to independent CPE vendors, as well as the other CPNI rights of such customers.

3. *Timing of Initial Notice*

23. Only three of the BOCs - NYNEX, Bell Atlantic, and Ameritech - indicate when they plan to provide the initial notice required by the Commission to multiline business customers. NYNEX states that it will mail this notice upon approval of its compliance plan. Bell Atlantic states that it will provide the required notice by January 1, 1988. Ameritech states that it will not provide this notice until four to six months after approval of its compliance plan. It does not explain the reason for this delay.

24. Although we approve the BOCs' CPNI plans, we seek to ensure that multiline business customers will receive expeditious notice of their CPNI rights.[35] We also acknowledge that the BOCs may need a reasonable time to implement an efficient means of notifying customers, such as through billing inserts. Accordingly, we approve the plans of NYNEX and Bell Atlantic in this respect. We require all other BOCs to amend their plans to state that they will notify multiline business customers of the Commission's CPNI rules within 60 days after publication of a summary of this Order in the Federal Register.[36]

4. *Response Forms*

25. As noted above, NYNEX states that it will provide customers with a pre-addressed postcard that they may use to request restricted treatment of their CPNI. We find that the other BOCs should also provide response forms. Response forms will make it as easy as possible for customers to understand and exercise their CPNI rights. Accordingly, we require all of the BOCs, except NYNEX, to amend their plans to state that they will include with their CPNI notice response forms that customers can use to restrict their CPNI.

5. *Aggregate CPNI*

26. Neither Bell Atlantic nor Ameritech addresses the Commission's requirement concerning the availability of aggregate CPNI. Accordingly, we require these BOCs to amend their plans to state that they will make non-proprietary, aggregate CPNI available to independent CPE vendors to the extent that, and on the same terms and conditions as, such information is made available to their own CPE personnel.

6. *Uniform Notification Date*

27. We do not find compelling ICA's argument that all multiline business customers in all BOC regions should receive notification of their CPNI rights at the same time. The administrative burden on a multiregional customer in receiving and handling multiple notices does not appear substantial, particularly since the *Reconsideration Order* clarified that customers may request restricted treatment of their CPNI even before receiving their CPNI notice.[37] Moreover, a single uniform notice date could preclude the BOCs from providing the required notice through such means as billing inserts, which could well be the cheapest and most efficient means of doing so. Furthermore, since we require all BOCs to provide the required CPNI notice within 60 days of publication of a summary of this Order in the Federal Register, all BOC customers will receive their notices within the same time period. Thus, the potential unnecessary costs of a uniform notification date outweigh its minimal benefits to multiregional customers, and we decline to adopt such a requirement.

7. *Initial Customer Response Period*

28. As ICA notes, none of the BOCs, except NYNEX, indicates how long multiline business customers will be given to respond to notification of their CPNI rights before their CPNI will be made available to BOC CPE personnel. Unless multiline business customers receive a reasonable time period in which to exercise their CPNI rights, and unless they are informed of the length of this period at the time they are notified of their CPNI rights, BOC CPE operations could gain access to a multiline busines customer's CPNI before the customer has had a reasonable opportunity to request confidential treatment of its CPNI. Although all of the BOCs other than NYNEX oppose a specific, minimum response period, none of them offers any convincing arguments. Accordingly, each BOC other than NYNEX must amend its plan to state that before its CPE personnel are permitted to access multiline business customers' CPNI, such customers will receive an initial period of at least 30 days after notice of their CPNI rights in order to excercise their CPNI rights. The initial notice to such customers must clearly describe the length of the initial response period permitted and must state that CPNI will be made available to BOC CPE personnel only if no response is received by the end of that period.[38] Until expiration of the initial response period, the BOCs are prohibited from using their customers' CPNI in CPE marketing.[39]

IV. NONDISCRIMINATION IN INSTALLATION AND MAINTENANCE SERVICE

A. Installationand Maintenance Procedures

1. *Requirements for Installation and Maintenance Procedures*

29. The *BOC CPE Order* requires the BOCs to retain their COGs as optional points of contact for the CPE vendor community and customers with non-BOC CPE, and prohibits the BOCs from discriminating in favor of their own CPE customers in their provision of installation and maintenance of network services.[40] In their compliance plans, the BOCs must describe their COG operations, as well as other procedures they will use to prevent such discrimination.

2. BOC Nondiscrimination Plans

a. *Installation*

30. Each BOC states that it will retain its existing COGs as points of contact for unaffiliated vendors and customers using competitors' CPE. The COGs will receive installation requests, assign due dates for these requests, transmit

them to appropriate network channels for processing, notify customers of any change in the assigned due dates, resolve service difficulties in the initial period of service, and generally represent the interests of customers and vendors in their dealings with the BOCs.

31. The BOCs assert that their procedures for processing installation orders further ensure the absence of discrimination in their installation processes.[41] They state that they assign due dates for most installation orders based on standard intervals for the types and quantities of services required and/or the work force available.[42] The source of a customer's CPE, they state, is not a consideration in this process.[43] Once the due date is assigned, a service order is generally prepared and transmitted to the appropriate channels for processing. According to the BOCs, the installation provisioning process is largely mechanized and thus leaves little room for discrimination. For example, computerized systems, such as COSMOS (Computer System for Mainframe Operations) and FACS (Facility Assignment Control System) or MARCS (Mechanized Assignment Records Conversion System) are generally used to assign central office facilities and outside plant on installation orders, while TIRKS (Trunk Integrated Record Keeping System) is used to select circuit components for designed circuits.[44] The BOCs state that to the extent that manual intervention is necessary, they process orders on a first-come, first- served basis and in order to meet assigned due dates.[45] NYNEX, BellSouth, Southwestern Bell, and PacTel also state that they train their employees to comply with the Commission's nondiscrimination rules, and warn them that violation of these rules might result in disciplinary action.[46]

b. *Maintenance*

32. Each of the BOCs states that its maintenance systems do not permit discrimination based on the types of CPE that customers use. As described in their plans, the basic elements of the BOCs' maintenance systems are uniform.[47] Generally, when a customer reports trouble to any of the BOCs, that customer will be assigned a repair date based on the type of service involved, the exigency of the situation (for example, whether there is a total service outage, or whether numerous users are affected), and the availability of personnel to work on the problem.[48] Ameritech and Southwestern Bell state that if the service has required specialized circuit design, their personnel will create a trouble report that will be placed in a pooled work list and handled on a first-in, first-out basis.[49] Otherwise, the BOCs schedule testing and repairs so that the assigned repair date is met. All of the BOCs state that their maintenance personnel do not ask customers about the source of their CPE when they report trouble, although NYNEX acknowledges that if a CPE vendor reports the trouble on behalf of its customer, NYNEX necessarily knows the customer's CPE source.[50] The BOCs also state generally that they schedule and conduct network service repairs without regard to their customers' CPE source.

3. *Positions of the Parties*

33. Only IDCMA filed comments on the BOCs' nondiscrimination plans. IDCMA criticizes Ameritech, NYNEX, and Bell Atlantic for providing insufficient detail in their plans on their installation and maintenance procedures and asks us to require these BOCs to supplement their compliance plans with a more complete description of their installation and maintenance procedures.[51] IDCMA does not oppose approval of the other BOCs' installation and maintenance procedures, but asks us to recognize that although these procedures are likely to decrease the opportunities for discrimination, they cannot assure that such opportunities do not exist.[52]

4. Discussion

(a) *Installation*

34. Based on the record, each BOC's installation procedures, as described, should ensure to a reasonable degree that the BOC does not discriminate in its provision of installation service. The BOCs generally assign installation dates based on standard time intervals and without reference to the source of a customer's CPE.[53] These standard intervals are published and generally available to independent CPE vendors and other persons placing installation orders.[54] The installation work itself is, for the most part, mechanized, and generally prioritized so as to meet the assigned due date. Although there is some room for human discretion in the installation process, the BOCs' procedures are sufficiently mechanized and nondiscriminatory that the potential for discriminatory human intervention is small.[55] We thus approve each BOC's plan for processing installation orders.

35. We note, however, that while four of the BOCs state that they instruct their installation personnel not to discriminate, Ameritech, Bell Atlantic, and US West do not. Such training is important in avoiding discrimination, and we require all BOCs to provide it. Accordingly, Ameritech, Bell Atlantic, and US West must amend their compliance plans, within fourteen days after publication in the Federal Register of a summary of this Order, to describe the training they provide their employees on the Commission's nondiscrimination rules.

(b) *Maintenance*

36. We also approve the BOCs' proposed maintenance procedures, but require Ameritech and US West to amend their plans as discussed below. The BOCs generally assign repair dates based on their work force capabilities and the exigency of the service problem. Testing and repairs are generally scheduled and performed with reference to the assigned repair date. In neither case is a customer's CPE source a factor.[56] Indeed, in many instances, the BOCs will not know the source of their customers' CPE, since no BOC asks customers to provide this information when they report trouble, and the BOCs' maintenance systems do not track information about customers' CPE.[57] Moreover, five of the BOCs state that they instruct maintenance personnel on the Commission's nondiscrimination rules and that disciplinary action will be taken if these rules are violated. Given these procedures, discrimination in the maintenance process is highly unlikely. However, we require the two BOCs that have not indicated whether their employees are trained to comply with the Commission's nondiscrimination rules - Ameritech and US West - to provide such training and to amend their compliance plans within fourteen days of the publication of a summary of this Order in the Federal Register to describe it.

B. Installation Reports

1. *Reporting Requirements*

37. The *BOC CPE Order* requires the BOCs to file quarterly reports regarding installation of network services for their own CPE customers and customers of their CPE competitors.[58] The BOC compliance plans must describe how these quarterly reports will be compiled and the extent to which the data in them will disaggregated. The *BOC CPE Order* provides that the BOCs would not necessarily be required to disaggregate data into the categories that AT&T uses for its installation reports,[59] but requires that the reports "provide at least a comparable level of disaggregation to that of AT&T."[60]

2. *BOC Plans for Generating Installation Reports*

38. Each BOC states that it will file quarterly reports on the timeliness of its installation service to its own CPE customers and to customers using CPE provided by its competitors. The BOCs state that they will generate these reports by accessing data stored in their service order processing systems on installation intervals for recently completed installation orders. The BOCs' proposals for generating the installation reports differ, however, in other important respects, which are summarized below.

39. *BellSouth* - BellSouth proposes to compile installation reports by modifying the procedures that generate the COG report that it currently files with the Commission.[61] Specifically, BellSouth will continue to gather data about customer CPE sources through its COGs. This information will be matched against data, compiled in BellSouth's Service Order Processor, on BellSouth's success in meeting its promised installation dates.[62] The Service Order Processor will be modified to track the percentage of due dates met for four service categories. BellSouth originally indicated in its plan that it would report on the following four categories: (1) exchange service; (2) WATS/800 service; (3) special services (designed); and (4) nondesigned private line service.[63] However, in an *ex parte* presentation, BellSouth stated that it could further disaggregate its special services (designed) and nondesigned private line categories into three categories of digital service - DS-1, 56 Kbps, and Subrate (1.2, 2.4, 4.8, and 9.6 Kbps) - and two categories of analog service - designed and nondesigned.[64]

40. *NYNEX* - According to NYNEX, its service order processing systems currently contain data on the timeliness of installation service to NYNEX customers. NYNEX plans to extract data on recent installations from these systems on a quarterly basis. This information will then be provided to an outside firm that will match it with the account records of NYNEX Business Information Systems Co. (BISC), the NYNEX CPE subsidiary, in order to determine which of these orders is associated with a customer that has purchased CPE from BISC.[65] In its compliance plan, NYNEX proposes to disaggregate its data into four categories: (1) business service (including flat rate and measured business services, all PBX systems, and all types of key systems); (2) data services; (3) private line telephone services (including designed voice grade services); and (4) WATS/800 service.[66] However, in an *ex parte* meeting with the Bureau, NYNEX stated that it could further disaggregate its data services category on a sampling basis into the categories proposed by BellSouth in its *ex parte* meeting with the Bureau. [67]

41. *US West* - US West plans to generate its installation reports in the same manner as BellSouth, *i.e.*, by disaggregating its existing COG reports.[68] US West initially proposed to disaggregate its data into seven categories of service: (1) business service (including all flat rate and measured individual, two, and multi-party business services); (2) key; (3) PBX; (4) Centrex/Centron; (5) private line - analog; (6) private line-digital; and (7) special access (voice grade services used on a special service basis and not terminating in a teletypewriter or data set).[69] However, in an *ex parte* meeting with the Bureau, US West proposed the following alternative categories: (1) switched business service; (2) WATS/800 service; (3) private line analog; (4) high capacity digital data services (above 56 Kbps); (5) 56 Kbps; and (6) subrate digital data services.[70]

42. *Southwestern Bell* - Southwestern Bell states that it will identify its CPE customers for purposes of the installation reports by placing a code in the Southwestern Order Retrieval and Distribution System that will mark service orders associated with Southwestern Bell CPE. Each month, Southwestern Bell will provide a census of orders associated with its own CPE and a sampling of all other network service orders to an outside survey firm. Southwestern Bell will also provide the survey firm with information concerning Southwestern Bell's success in meeting the assigned installation dates for each order. The survey firm will then contact small and medium business customers monthly to inquire about their satisfaction with Southwestern Bell's installation service, while it will contact large business customers annually (half of such customers each six months) by mail. Southwestern Bell proposes to file quarterly reports for its small and medium size business customers, and annual reports for its large business customers.[71] Its reports will include both the survey results and data concerning the company's success in meeting the assigned due date. In its compliance plan, Southwestern Bell proposed to disaggregate its data into the same four categories that BellSouth initially proposed.[72] However, in a subsequent *ex parte* filing, Southwestern Bell proposed an alternative set of reporting categories, consisting of three categories of switched services - (1) local exchange, (2) analog switched special,[73] (3) switched digital[74] - and three categories of private line service - (1) 56 KBS, (2) subrate DDS, and (3) T-1.[75]

43. *PacTel* - PacTel plans to generate installation reports by placing a code in a customer's network service records when that customer purchases CPE from PacTel.[76] In its compliance plan, PacTel stated that it will report on the percentage of appointments met as well as the total installation interval for three categories of service: (1) residential; (2) business; and (3) special services.[77] In a subsequent *ex parte* letter, PacTel indicated that it could disaggregate the data in its installation reports into the categories proposed by US West in its *ex parte* letter, *i.e.*, three categories of private line digital service -DS-1, 56 Kbps, and Subrates (1.2, 2.4, 4.8 and 9.6 Kbps); analog private line service; WATS/800; and business exchange service.[78]

44. *Bell Atlantic* - Bell Atlantic also proposes to generate installation reports by entering a code in its service order systems. It will use three different codes: one for orders associated with Bell Atlantic CPE sales; one for orders associated with unaffiliated vendor CPE sales (based on information from the COGs); and one for orders in which no CPE vendor is involved.[79] In its plan, Bell Atlantic stated that it would report on the total number of orders and the number of missed appointments in each of these categories, but would not disaggregate its data into service categories.[80] However, in an *ex parte* filing, Bell Atlantic stated that it could disaggregate data into the following categories: three categories of digital data services - (1)

subrates (9.6 Kbps and below); (2) 56 Kbps; and (3) high capacity (above 56 Kbps) - and two or three categories of analog services - either designed/nondesigned (as BellSouth and NYNEX propose), or switched business, private line analog, and WATS/800 (as US West proposes).[81]

45. *Ameritech* - Ameritech does not specifically describe how it will generate its installation reports but implies that it will do so by disaggregating its current COG reports.[82] Ameritech states that it will require six months after approval of its compliance plan to complete this disaggregation. Ameritech also states that it will track only orders for switched local exchange services, and not orders for private line, data, WATS-type, or access services, as these latter services "are not usually associated with CPE interconnection requests."[83] In addition, Ameritech proposes to track affiliated orders only if they are business orders involving PBX trunks or five or more exchange lines. This limitation, according to Ameritech, is necessary to eliminate orders not involving a CPE sale, but which are reported by personnel who market CPE. In its compliance plan, Ameritech proposed to disaggregate its data into three service categories: (1) Centrex; (2) non-Centrex exchange lines; and (3) PBX.[84] However, in an *ex parte* letter to the Commission, Ameritech stated that it could provide further disaggregation along the lines suggested by US West and PacTel.[85]

3. *Positions of the Parties*

46. As in the case of the BOCs' nondiscrimination procedures, only IDCMA filed comments on the BOCs' plans for generating the required reports. IDCMA asks us to recognize that although the BOCs' installation procedures are likely to decrease their opportunities for discrimination, these procedures cannot ensure that such opportunities do not exist, since none of the BOCs can entirely eliminate human involvement in its installation and maintenance processes.[86] IDCMA argues that because of this inherent potential for discrimination, it is imperative that this Bureau ensure that the nondiscrimination reports be sufficiently disaggregated to reveal discriminatory practices.[87] IDCMA argues that none of the proposed report formats outlined in the BOCs' compliance plans is satisfactory. It notes that the *AT&T Plans Order* required AT&T to disaggregate private line data in its nondiscrimination reports into six subcategories. It claims that the *BOC CPE Order* required the BOCs to provide "at least the same level of disaggregation as AT&T,"[88] and asserts that the BOCs not only deviate substantially from this format, but barely explain this deviation.[89] IDCMA also states that the Bureau should be prepared to require additional subcategories in the future as new service offerings, such as ISDN and 45 Mbps digital transmission service, emerge.

47. All of the BOCs, except Southwestern Bell, replied to IDCMA's arguments. As an initial matter, most of these BOCs dispute the claim that their network services personnel have an incentive to discriminate against customers that use competitors' CPE. BellSouth, for example, argues that its employees have no motive to discriminate, since they would receive no personal benefit from such discrimination and would, indeed, run the risk of dismissal.[90] Similarly, Ameritech states that its operations managers are rated and paid based on the quality of total service their units provide, such as the percent of time installation due dates are met.[91]

48. Focusing on the reporting requirement, all of the BOCs that filed reply comments on this safeguard also argue that a requirement that they provide six subcategories of private line data would render the reports statistically meaningless because of the small amounts of data that would be available in each category. US West, for example, argues that only 15 private line digital orders were received by Pacific Northwest Bell (PNB) "over a three month period" and that PNB estimates that fewer than 20% of COG orders received are for private line services.[92] Ameritech states that its CPE represents less than one percent of the total CPE connected to private line services within its service area, so that disaggregation of private line categories would be pointless.[93] According to Ameritech, its categories (Centrex, non-Centrex exchange lines, and PBX) represent the categories that reflect the bulk of competitive activity. Ameritech states that private line, data and WATS-type services should not be included because those services are not usually associated with isolated CPE interconnection requests.[94]

49. The BOCs also argue generally that it would be unduly expensive to generate the six subcategories of private line data that IDCMA proposes. NYNEX, for example, claims that its categories were chosen, in part, so that existing systems can be utilized to generate the reports.[95] Similarly, US West argues that adding categories to the ones it proposes would require the additional, unnecessary expense of developing and querying data bases. Bell Atlantic states that attaining the level of detail sought by IDCMA would require that its reports be generated manually, since Bell Atlantic systems are too limited to do so now and could not be modified to do so for at least two years.[96] PacTel and BellSouth also argue that adoption of IDCMA's proposal would entail additional expense.

4. *Discussion Disaggregation of Installation Reporting Categories*

50. None of the compliance plans wholly satisfies the requirement of the *BOC CPE Order* that the BOCs provide a "comparable level of disaggregation as was required of AT&T." AT&T must disaggregate its data into a WATS/800 category and six subcategories of private line service. The categories proposed by the BOCs do not resemble these categories; indeed the degree of disaggregation presented differs widely from BOC to BOC. The BOCs generally defend their proposals by noting that their service offerings differ from those of AT&T and that their CPE operations and markets are smaller. However, the BOCs do not show how the differences between their service offerings and markets and those of either AT&T or the other BOCs justify their choices of reporting categories. Nor are their compliance plan proposals otherwise supported to any substantial degree. For example, the *AT&T Plans Order* selected subcategories in order to ensure that discrimination in one subcategory of service could not be veiled by a lack of discrimination in another category.[97] Most of the BOCs do not address this concern in their plans or their pleadings.[98] In short, the reporting categories proposed in the BOCs' compliance plans deviate substantially from the degree of disaggregation required of AT&T and such deviations are not adequately justified.

51. However, as noted above, all of the BOCs have recently informed the Bureau that they are able to generate reporting categories that more closely resemble the AT&T categories. Indeed, all of the BOCs have stated that

they could provide data for the same three categories of digital private line service that are used in AT&T reports - T1, 56 Kbps, and subrates. All but Southwestern Bell also offer to include 800/WATS as a reporting category. BellSouth, NYNEX, and Bell Atlantic state further that they can report on two categories of analog private line service - designed and nondesigned - while US West, PacTel and Ameritech state that they can report on analog private line service, but not two subcategories thereof. We find that the recent *ex parte* proposals of BellSouth, NYNEX, Bell Atlantic, US West, PacTel and Ameritech are acceptable, and we therefore approve the reporting categories proposed therein. We further find that the recent *ex parte* proposal of Southwestern Bell is acceptable, provided that Southwestern Bell modifies its proposal to include a separate WATS/800 category and a category for analog private line service.

52. Each BOC should amend its plan to list and describe installation reporting categories that are consistent with our discussion above. As with other amendments required in this Order, these amendments should be filed no later than 14 days after publication of a summary of this Order in the Federal Register.

b. *Other Issues*

53. We also wish to address certain issues, other than the degree of disaggregation, raised by some of the BOC proposals for generating nondiscrimination reports. As noted above, Southwestern Bell proposes to use different survey procedures for its its small and medium size customers and its large business customers. It proposes random monthly samplings and quarterly reports for the former, and biannual surveys and annual reports for the latter. Southwestern Bell explains this difference by citing its small base of large business customers. Although we have no objection to (and indeed encourage) the provision of separate data for large business customers and other customers, we will not permit Southwestern Bell to deviate from the quarterly reporting requirements of the *BOC CPE Order* by only filing annual reports for its large business customers. Thus, our approval of Southwestern Bell's plans for installation reporting is predicated on its filing an amendment to its plan within 14 days after publication of a summary of this Order in the Federal Register indicating that it will provide quarterly reports for all of its business customers, large and small.

54. In addition, Ameritech proposes to take six months from the approval of its plan to disaggregate its COG reports into its proposed service categories. Ameritech does not explain why this process will take six months, nor do any of the other BOCs that propose to disaggregate COG reports claim that the process would require six months. While we do not require Ameritech or any of the other BOCs to complete the modifications to their systems necessary for generating installation reports within any specific time, we note that the BOCs may not provide CPE on an unseparated basis until their reporting mechanisms are in place and operational. BOCs must file their first quarterly nondiscrimination reports no later than 90 days after they begin to offer CPE on an unseparated basis pursuant to this Order.

V. JOINT MARKETING REQUIREMENT

A. *The Joint Marketing Requirement*

55. As noted above, the joint marketing safeguard requires the BOCs to provide independent CPE vendors with a meaningful opportunity, through sales agency plans or other functionally equivalent means, to market their CPE jointly with Centrex and other BOC network services.[99] This requirement is intended to further three major goals. First, it provides independent CPE vendors with the opportunity to offer customers an integrated CPE/network services package on an efficient basis.[100] Second, by ensuring that independent CPE vendors as well as the BOCs are able to offer one-stop shopping for CPE and network services, it fosters competiton for the BOCs' CPE operations. Third, the requirement could result in independent CPE vendors making integrated service offerings available to customers that the BOCs would not choose to serve.[101]

B. *BOC Plans for Complying with the Joint Marketing Requirement*

56. At the time of the *BOC CPE Order*, five of the BOCs - Ameritech, BellSouth, NYNEX, Southwestern Bell, and US West - already had sales agency programs in place. Each of these BOCs proposes in its compliance plan to satisfy the joint marketing requirement by continuing its sales agency program. Of the two BOCs that had not established sales agency programs prior to the adoption of the *BOC CPE Order*, Bell Atlantic proposes to adopt a sales agency program on a trial basis, coupled with a "Vendor Support program, while PacTel proposes a different approach consisting of vendor support and joint venture programs that it claims are "functionally equivalent," and indeed superior, to sales agency programs for purposes of satisfying the joint marketing requirement.

1. *Existing Sales Agency Programs*

57. The BOCs with existing sales agency programs do not generally describe these programs in great detail in their compliance plans. However, reports filed with the Commission pursuant to the *Sales Agency Order* (as modified by the *Sales Agency Reconsideration Order)* [102] provide some information about the scope of these programs. These reports indicate that while some BOCs pay a substantial percentage of commissions from their programs to unaffiliated vendors,[103] others pay a relatively large percentage of their commissions to their own affiliates, and relatively little to independent sales agents.[104] The BOCs limit entry to their sales agency programs to CPE vendors that satisfy certain criteria.[105] Based on information in the current record, the number of CPE vendors included in existing sales agency programs ranges from 38, for BellSouth, to 60, for Southwestern Bell.[106] Furthermore, existing programs also apply only to particular network services. For example, BellSouth's sales agency program currently applies only to Centrex service (though other services are being considered for possible inclusion).[107]

2. *Bell Atlantic Proposal - Trial Sales Agency Program*

58. Bell Atlantic proposes to comply with the joint marketing requirement through an expanded version of its existing "Vendor Support program and by implementing a limited sales agency program on a trial basis. According to Bell Atlantic, its Vendor Support program currently assists

independent CPE vendors in selling network services, with an emphasis on Centrex service. Since 1984, the budget for this program has expanded from $3.1 million to $7.5 million.[108] Through this program, Bell Atlantic states that it provides education and training to CPE vendors that wish to purchase network services on behalf of their customers. Bell Atlantic says that it provides seminars, instructional modules, brochures, newsletters, and manuals to inform vendors of such topics as network service applications and prices, and procedures for ordering network services on behalf of customers, and coordinating with Bell Atlantic personnel in the provisioning process to ensure customer satisfaction. Bell Atlantic claims that as of December 1986, over 900 vendors had used this program.[109]

59. According to Bell Atlantic, its trial sales agency program will be implemented initially in one local access and transport area (LATA) in Virginia (Norfolk) and one in Pennsylvania (Harrisburg).[110] Bell Atlantic anticipates retaining 2-5 agents in each LATA and will initially pay commissions on the sales of Centrex service only. Bell Atlantic states that the commission levels are currently being negotiated, but will be no less than 7%.[111] Bell Atlantic will supply support materials to its agents, and agents will be required to attend a one-day seminar on Centrex service.

3. *PacTel Proposal - Intermediary and Joint Marketing Programs*

60. Pactel proposes to comply with the joint marketing requirement by implementing a "Joint Marketing" program and an "Intermediary Marketing program, which together, it claims, are superior to sales agency programs in providing meaningful integrated marketing opportunities to independent CPE vendors. PacTel's Intermediary Marketing program is similar in concept to Bell Atlantic's Vendor Support program, and includes the same kind of vendor education activities, such as seminars, brochures, and newsletters.[112] However, according to PacTel, its Intermediary Marketing program is more extensive in scope than Bell Atlantic's Vendor Support program. Thus, PacTel proposes a $15 million annual budget for its Intermediary Marketing Program, twice the budget proposed by Bell Atlantic for its Vendor Support program.[113] In addition, PacTel states that its Intermediary Marketing program involves more than vendor education activities. For example, a key element of the Intermediary Marketing program is network design support - the dedication of specific personnel to assist CPE vendors and telecommunications consultants in the design of network solutions (specialized or otherwise) for their customers or clients, and in responding to requests for proposals (RFPs).[114] As part of this program, PacTel also sponsors an annual telecommunications product and application show designed to provide a common setting for vendors to demonstrate and learn about new products and services.[115] PacTel's Intermediary Marketing program extends equally to all network services.[116] PacTel tracks network sales by participants in its Intermediary Marketing program, and it offers to share these results with the Commission on a confidential basis.[117]

61. The other component of PacTel's compliance proposal is its Joint Marketing program. Under this program, PacTel will enter into joint marketing arrangements with various CPE vendors, including its own CPE operations. PacTel would retain sole discretion in choosing the CPE and the CPE vendor for particular joint marketing projects.[118]

C. *Positions of the Parties*

1. *Existing Sales Agency Programs*

62. IDCMA claims that existing sales agency programs do not satisfy the joint marketing requirement because they only apply to a limited range of network services selected by each BOC.[119] IDCMA states that the Commission's directive that BOCs provide independent CPE vendors with a meaningful opportunity to market their CPE jointly with Centrex "and other BOC network services" is a mandate that all network services be included in sales agency programs.[120] The limited scope of existing sales agency programs, according to IDCMA, deprives entire categories of CPE vendors, such as the vendors of CPE for data applications, of meaningful joint marketing opportunities. IDCMA argues that such limited programs could induce sales agents to focus on selling BOC services (and the associated products) for which commissions are paid, rather than other services (and products) that might better serve the needs of the customer.[121]

63. In their reply comments, NYNEX, BellSouth, US West, and Bell Atlantic counter IDCMA's claim that sales agency programs should encompass all network services by arguing that the Commission has never adopted such a requirement and indeed implied in the *BOC CPE Order* that existing sales agency programs would satisfy the "meaningful opportunity requirement.[122] BellSouth and US West further argue that the inclusion of all network services in sales agency programs would be inappropriate because commissions are primarily a marketing tool used by the BOCs to promote particular services, and because increased commissions might affect network service rates.[123]

2. *Bell Atlantic Proposal*

64. IDCMA also attacks Bell Atlantic's joint marketing proposal, criticizing the Bell Atlantic Vendor Support program on the ground that it does not provide commissions to independent CPE vendors and does not permit them the advantages of an agency affiliation with Bell Atlantic.[124] IDCMA claims that commissions are necessary to provide independent CPE vendors with the incentive to market network services. It claims that an agency relationship with the BOC is necessary to place independent CPE vendors on an equal footing with BOC CPE operations, since BOC name recognition and business goodwill will cause customers to prefer "authorized" BOC agents over unrelated entities.[125] IDCMA also contends that Bell Atlantic's trial sales agency program is inadequate in scope to warrant approval.[126]

65. In reply, Bell Atlantic states that its Vendor Support program enhances vendors' integrated sales efforts and provides them with the opportunity and resources to sell network services.[127] It responds to IDCMA's claim that commissions are necessary to provide independent CPE vendors with the incentive to market network services by noting that in 1986, independent CPE vendors sold nearly 200 Centrex systems and $10 million of other network services in its territory, even without the payment of commissions by Bell Atlantic.[128]

3. *PacTel Proposal*

66. Both IDCMA and NATA challenge PacTel's proposal, claiming that the programs it proposes do not represent the "functional equivalent" of a sales agency program. IDCMA says that the program is deficient because it does not provide for sales commissions or allow independent CPE vendors a public affiliation with the BOC.[129] NATA primarily challenges PacTel's lack of sales commissions. NATA asserts that the payment of such commissions is necessary for market parity in the CPE industry, since commission payments to independent CPE vendors compensate them for the advantage that BOC CPE operations have in not bearing the costs of marketing network services, which the BOCs' regulated operations bear.[130] NATA also argues that commissions represent a useful benchmark for assessing BOC joint marketing cost allocations. [131]

67. IDCMA and NATA also attack PacTel's Joint Marketing program on the ground that PacTel would retain unfettered discretion in choosing the CPE and the vendor for joint marketing activities.[132] NATA also argues that the PacTel Joint Marketing program would improperly give the BOC control over the package of network services and CPE to be sold to the customer, in contrast to a sales agency program, which allows the CPE vendor to exercise such control.[133]

68. PacTel replies that its Intermediary Marketing and Joint Marketing programs are superior to sales agency programs as tool for providing meaningful integrated marketing opportunities to independent CPE vendors.[134] PacTel argues that unlike sales agency programs, which are limited to a small number of CPE vendors and to particular services, its Intermediary Marketing program extends to all vendors and encompasses all network services.[135] PacTel also disputes the notion that commissions are a necessary component of any compliance plan. PacTel states that even without commissions, independent CPE vendors have incentives to market network services, and that commissions only distort the marketplace by adding unnecessary incentives to market the service for which commissions are paid.[136] PacTel also argues that the *Joint Cost Order* has superseded sales agency programs as a means for ensuring proper cost allocation by the BOCs.[137]

D. *Discussion*

1. *Existing Sales Agency Programs*

69. We approve the compliance plans of BOCs proposing to retain their existing sales agency programs. We believe that these programs will further the purposes of the joint marketing requirement by providing integrated marketing opportunities to independent sales agents. At the same time, however, we recognize that there are certain limitations to existing sales agency programs as vehicles for providing meaningful joint marketing opportunities to independent CPE vendors. Thus, as explained below, while we do not require any modifications to the existing sales agency programs at this time, we will reassess the industry's experience with sales agency plans in two years to determine whether modifications should be required.

70. IDCMA asks us to require the BOCs to open their sales agency programs to all qualified vendors and network services. We decline to do so for several reasons. First, a requirement that the BOCs pay commissions on a much broader basis, without regard to market conditions, could be inefficient and, at some point, even affect local service rates. Second, an agency relationship open to all qualified vendors would presumably result in a broader cross-section of vendors using the BOCs' names in marketing, increasing the risk that poorly operated, but "qualified," vendors would diminish the BOCs' business goodwill. Third, most of the BOC sales agency programs are still in a developmental stage. Even without regulatory intervention, the programs are generally growing in scope, both in terms of the number of sales agents and the services encompassed within the programs. Under the circumstances, a change in the sales agency requirement at this time would be premature. Fourth, this request appears to be more in the nature of a reconsideration petition than a proposal for action to be taken in a compliance proceeding at the Bureau level, since the Commission has already indicated that existing sales agency programs would satisfy the joint marketing requirement established in the *BOC CPE Order*.

71. However, IDCMA does present some valid concerns about the limited scope of existing sales agency programs. As noted above, most existing programs currently are limited in terms of the number of CPE vendors and the number of network services, both of which are chosen by the BOC. Thus, to the extent that the Commission intended the joint marketing requirement to promote fairness in the CPE industry, the existing sales agency programs potentially could be improved. Accordingly, while we approve each of the existing sales agency programs as a means for complying with the joint marketing requirement, we will reassess these programs in two years in light of industry experience with them and with alternative programs, such as Bell Atlantic's. During this two-year period, all of the BOCs that proposed to continue their sales agency programs are required to continue to file the reports required by the *Sales Agency Reconsideration Order*. At the end of the two-year period, if conditions so warrant, we will recommend to the Commission any modifications or supplements to the sales agency programs that might be necessary.

2. *The Bell Atlantic Proposal*

72. We approve Bell Atlantic's Vendor Support Program and trial sales agency program, subject to reassessment in two years. While, as IDCMA observes, Bell Atlantic's trial sales agency program appears to be somewhat limited in scope, its Vendor Support program could provide independent CPE vendors with resources and training necessary to sell network services successfully. By combining a sales agency program with vendor support activities that are more widely available to independent CPE vendors, Bell Atlantic's approach thus potentially addresses the concerns we have discussed in the preceding paragraph. We therefore require Bell Atlantic to implement the proposal outlined in its compliance plan. In two years, we will evaluate its sales agency and Vendor Support programs to determine whether modifications should be made at that time. To facilitate evaluation, we require Bell Atlantic to file with us reports on its sales agency program identical to those required by the *Sales Agency Reconsideration Order*. We also require it to file annual reports that describe in detail its activities under the Vendor Support program and the number of vendors included in each such activity.[138]

3. *The PacTel Proposal*

73. We do not approve PacTel's joint marketing proposal. While PacTel's Intermediary and Joint Marketing programs appear to offer a number of valuable services to independent CPE vendors, these programs are not, in themselves, functionally equivalent to sales agency programs. A key benefit of sales agency programs is that they allow independent CPE vendors to receive compensation for their efforts in marketing network services, thereby placing them on a more equal footing with the BOCs' CPE operations, which do not bear network services marketing costs. To this extent, sales agency programs promote competitive parity in the CPE industry and increase competition for BOC integrated network services/CPE packages. They also provide incentives for CPE vendors to make integrated CPE/network services offerings available to the public. PacTel's Intermediary and Joint Marketing programs do not offer these benefits to the same extent as sales agency programs. Under the plans currently before us, PacTel would be the only BOC that would have no program at all that provided for the payment of commissions. We find this is not a satisfactory response to the Commission's direction to PacTel to implement a sales agency program or its functional equivalent as the means of satisfying the joint marketing requirement. We thus require PacTel, as a precondition to structural relief, to establish a sales agency program or its functional equivalent in conjunction with or in lieu of its Intermediary and Joint Marketing programs. PacTel should file an amended joint marketing proposal describing this program by February 15, 1988. The joint marketing proposals of the other BOCs are examples of programs that satisfy our joint marketing requirement, during the two-year assessment period.[139]

VI. ORDERING CLAUSE

74. Accordingly, IT IS ORDERED, that, pursuant to Sections 4(i), 4(j), 201-205, 218, 220, 403, and 404 of the Communications Act, 47 U.S.C. " 4(i), 4(j), 201-205, 218, 220, 403, and 404, Sections 0.91(h) and 0.291 of the Commission's Rules, 47 C.F.R. " 0.91(h) and 0.291, and the *BOC CPE Order*, 2 FCC Rcd 143 (1987), the Compliance Plans of NYNEX, Bell Atlantic, Southwestern Bell, Ameritech, US West, and BellSouth described above ARE APPROVED, SUBJECT TO THE MODIFICATIONS SET FORTH HEREIN. The Compliance Plan of PacTel, as described above, is REJECTED TO THE EXTENT SET FORTH HEREIN.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] Furnishing of Customer Premises Equipment by the Bell Operating Telephone Companies and the Independent Telephone Companies, Report and Order, 2 FCC Rcd 143 (1987), *modified on reconsideration*, FCC 87-389 (released Dec. 17, 1987) (*Reconsideration Order*).

[2] *BOC CPE Order*, 2 FCC Rcd at 167, para. 145.

[3] We use the following abbreviations herein to refer to the BOCs: NYNEX (for New York Telephone Company and New England Telephone and Telegraph Company); PacTel (for Pacific Bell and Nevada Bell); BellSouth (for South Central Bell Telephone Company and Southern Bell Telephone and Telegraph Company); US West (for Mountain Bell, Northwestern Bell, and Pacific Northwest Bell), Ameritech (for the Ameritech Operating Companies); Bell Atlantic (for the Bell Atlantic Telephone Companies), and Southwestern Bell (for Southwestern Bell Telephone Company).

[4] On May 13, 1987, Bell Atlantic filed an addendum to its compliance plan, supplementing its description of its plan for complying with the "joint marketing requirement." We describe the joint marketing requirement in paragraph 55 below.

[5] In the *BOC Separation Order*, released December 30, 1983, which established the separate subsidiary requirement for BOC provision of CPE and enhanced services, we permitted the BOCs to send bills to customers that contain charges for CPE as well as basic services, subject to several conditions, for a period of four years. *See* Policy and Rules Concerning the Furnishing of Customer Premises Equipment, Enhanced Services and Cellular Communications Services by the Bell Operating Companies, Report and Order, 95 FCC 2d 1117, at 1140-42, paras. 62-63 (1983). For each BOC, we hereby extend the period for which this limited permission applies until the BOC implements structural relief. After the implementation of such relief, this permission will no longer be necessary.

[6] Second Computer Inquiry, Final Decision, 77 FCC 2d 384, *modified on reconsideration*, 84 FCC 2d 50 (1980), *further modified on reconsideration*, 88 FCC 2d 512 (1981), *aff' d sub nom.*, Computer and Communications Industry Association v. FCC, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied*, 461 U.S. 938 (1983), *aff' d on second further reconsideration*, FCC 84-190 (released May 4, 1984).

[7] Separation of Costs of Regulated Telephone Service From Costs of Nonregulated Activities, Report and Order, 2 FCC Rcd 1298 (1987), *modified on reconsideration*, 2 FCC Rcd 6283 (1987).

[8] These rules address the concern that the BOCs may have some ability to design new network services or change network technical specifications to favor their own CPE or that of a preferred manufacturer. *See BOC CPE Order*, 2 FCC Rcd at 150, para. 47

[9] The Commission did not require the BOCs to file plans describing how they would comply with the network disclosure safeguard, since the terms of this safeguard were specified in detail in the *BOC CPE Order*.

[10] In this Order, we only address the BOCs' compliance plans. We will evaluate BOC cost allocation manuals in separate orders.

[11] The Commission clarified some aspects of the CPNI safeguard. *See Reconsideration Order* at para. 22.

[12] *Id.* at para. 30.

[13] *Id.* at para. 31.

[14] *BOC CPE Order*, 2 FCC Rcd at 153, paras. 65-70.

[15] In the *Reconsideration Order*, the Commission directed this Bureau, in reviewing the BOCs' compliance plans, to take steps to ensure that the plans permit customers to restrict BOC use of their CPNI in an easy and convenient fashion. *Id.* at para. 22.

[16] NYNEX Compliance Plan at 10; BellSouth Compliance Plan (CPNI) at 2; PacTel Compliance Plan, Appendix I at 2-3; and Ameritech Compliance Plan at 2-3.

[17] Bell Atlantic Compliance Plan, Attachment B at 2; Southwestern Bell Compliance Plan at 9; and US West Compliance Plan (CPNI) at 1-2.

[18] Bell Atlantic Compliance Plan, Attachment B at 2; Southwestern Bell Compliance Plan at 9; US West Compliance Plan (CPNI) at 1-2; and PacTel Compliance Plan, Appendix I at 1.

[19] BellSouth Compliance Plan (CPNI) at 3-4; Ameritech Compliance Plan at 3; Southwestern Bell Compliance Plan at 11; and US West Compliance Plan (CPNI) at 3.

[20] Bell Atlantic Compliance Plan, Attachment B at 2-3; PacTel Compliance Plan, Appendix I at 1-2.

[21] NYNEX Compliance Plan at 12-13.

[22] *Id.* at 11-12.

[23] *Id.* at 11.

[24] Bell Atlantic Compliance Plan, Attachment B at 1.

[25] Ameritech Compliance Plan at 4.

[26] ICA Comments at 13.

[27] BellSouth Reply Comments at 3-5; Ameritech Reply Comments at 2-3; US West Reply Comments (CPNI) at 2-3; PacTel Reply Comments at 18.

[28] BellSouth Reply Comments at 4; US West Reply Comments (CPNI) at 2.

[29] US West Reply Comments (CPNI) at 2-3.

[30] ICA Comments at 3-4. ICA also repeats the argument it raised in its petition for reconsideration of the *BOC CPE Order* that BOC CPE personnel should not have access to a customer's CPNI unless the customer specifically authorizes such access. *Id.* at 2. The Commission rejected this argument on reconsideration. *See Reconsideration Order* at paras. 20-21.

[31] BellSouth Reply Comments at 5; Ameritech Reply Comments at 3; PacTel Reply Comments at 18-19; US West Reply Comments (CPNI) at 1; and NYNEX Reply Comments at 8-9.

[32] BellSouth Reply Comments at 5; Ameritech Reply Comments at 3.

[33] BellSouth Reply Comments at 5.

[34] PacTel Reply Comments at 19.

[35] As stated in paragraph 28 below, the BOCs are prohibited from using their customers' CPNI until expiration of the initial response period after the first notification to the customers.

[36] If Bell Atlantic does not notify its customers of their CPNI rights by January 1, 1988, as its plan proposes, we require it to amend its plan in the manner described in this paragraph.

[37] *Reconsideration Order* at para. 22.

[38] As part of the amendments to their plans, we require the BOCs to file with us samples of the CPNI notices and response forms, required in paragraph 25 above, that they plan to mail to multiline business customers.

[39] We do not require NYNEX to amend its plan in this regard because it states in its reply comments that it will provide a 30-day initial response period. NYNEX's initial notice should, however, comply with the other requirements stated above.

[40] *BOC CPE Order*, 2 FCC Rcd at 155, para. 83.

[41] We summarize the BOCs' nondiscrimination procedures based on their compliance plans and reply comments. In response to the comments of IDCMA, three of the BOCs - Ameritech, Bell Atlantic, and NYNEX - provided substantially more detail about their installation and maintenance procedures in their reply comments than they did in their initial compliance filings. We incorporate such reply comments as integral parts of the compliance plan filings of these BOCs.

[42] *See* Southwestern Bell Compliance Plan at 19; US West Compliance Plan (Nondiscrimination Procedures) at 3; PacTel Compliance Plan, Appendix II at 6; and Ameritech Reply Comments, Attachment B at 1.

[43] *See* Southwestern Bell Compliance Plan at 19; US West Compliance Plan (Nondiscrimination Procedures) at 3; PacTel Compliance Plan, Appendix II at 6; and Ameritech Reply Comments, Attachment B at 1.

[44] *See , e.g.*, Ameritech Reply Comments, Attachment B at 2; Bell Atlantic Reply Comments, Attachment A at 2-4; and BellSouth Compliance Plan (Nondiscrimination Procedures) at 9-13.

[45] BellSouth Compliance Plan (Nondiscrimination Procedures) at 6; NYNEX Reply Comments, Attachment A at 2; Ameritech Reply Comments, Attachment B at 3.

[46] Southwestern Bell Compliance Plan at 20; PacTel Compliance Plan, Appendix II at 7; BellSouth Compliance Plan (Nondiscrimination Procedures) at 3, 7; NYNEX Reply Comments at 3.

[47] *Compare, e.g.*, PacTel Compliance Plan, Appendix II at 7-11 *with* Bell Atlantic Reply Comments, Attachment A at 4-6.

[48] *See , e.g.*, PacTel Compliance Plan, Appendix II at 1, 10; NYNEX Reply Comments, Exhibit B at 2; Ameritech Reply Comments, Attachment B at 4-5.

[49] Ameritech Reply Comments, Attachment B at 4-5; Southwestern Bell Compliance Plan at 21.

[50] NYNEX Reply Comments, Exhibit B at 1, n. 2.

[51] As noted above, these BOCs supplemented their description of their installation and maintenance procedures in their reply comments. *See supra*, note 38.

[52] IDCMA Comments at 6-11.

[53] The BOCs state that standardized intervals are not possible at this time for some of their more complex designed services, and that in these cases installation intervals are negotiated with the customer on a nondiscriminatory basis.

[54] Only PacTel states in its compliance plan that independent CPE vendors are aware of its standard installation intervals. *See* PacTel Compliance Plan, Appendix II at 6. We note, however, that the other BOCs' basic service tariffs either describe standard installation intervals, or indicate that information about standard intervals are readily available to all customers.

[55] As the Commission noted in the *Reconsideration Order*, it is more likely that integrated BOC CPE marketing/installation personnel will be aware of the identity of the customer's CPE vendor than maintenance personnel. *See Reconsideration Order* at n. 58. Since the installation of network services typically occurs shortly after the sale of CPE and at approximately the same time as CPE installation, knowledge by CPE marketing/installation personnel of the source of a customer's CPE may, in some cases, be unavoidable. To address the potential for BOC discrimination in installation, the Commission has retained its installation reporting requirement, as well as safeguards such as COGs that are designed to prevent such discrimination.

[56] While Ameritech and Southwestern Bell use different procedures for services that have required special circuit design, these procedures are also nondiscriminatory, since they are based on a first-come, first-served prioritization.

[57] As the BOCs note, it would be virtually impossible accurately to track information about the sources of their network service customers' CPE for purposes of discrimination since the BOCs have no way of knowing whether a customer has purchased CPE from a non-BOC source. Even if a customer purchases CPE from a BOC, the BOC will not know at the time future maintenance work is required whether the customer is also using CPE from another source or whether it has replaced the CPE it obtained from the BOC. *See* NYNEX Compliance Plan at 7, n.12; US West Compliance Plan (Nondiscrimination Procedures) at 15.

[58] As discussed in paragraph 6 above, the Commission eliminated mandatory maintenance reporting in the *Reconsideration Order* and gave each BOC the option of providing an annual affidavit attesting that it had followed the nondiscriminatory maintenance procedures outlined in its compliance plan and that it had not discriminated in its provision of maintenance service. All of the BOCs have elected this option. Thus, we do not address the BOCs' proposed procedures for generating maintenance reports in this Order. If in the future a BOC fails to provide the required affidavit, it will be required to implement maintenance reporting consistent with conditions outlined at that time.

[59] *See* Furnishing of Customer Premises Equipment and Enhanced Services by American Telephone and Telegraph Co., Report and Order, CC Docket No. 85-26, Mimeo No. 5503 (released July 3, 1986), *aff d*, 2 FCC Rcd 1214 (1987) (*AT & T Plans Order*).

[60] 2 FCC Rcd at 155, para. 85.

[61] The Commission adopted the COG reporting requirement to which BellSouth refers in American Information Technologies, Inc., BellSouth, Bell Atlantic, NYNEX, Pacific Telesis, Southwestern Bell, US West Capitalization Plans for the Furnishing of Customer Premises Equipment and Enhanced Services, 102 FCC 2d 1089 (1985) (*BOC Capitalization Plan Order*).

[62] BellSouth Compliance Plan (Nondiscrimination Procedures) at 14.

[63] *Id.*

[64] Letter from Thomas Hamby, Director - Federal Regulatory, BellSouth, to William J. Tricarico, Secretary, Federal Communications Commission, Oct. 29, 1987. By "designed" services, BellSouth refers to services that require special circuit design, such as foreign exchange (FX) and telegraph service. Nondesigned services are those that do not require special circuit engineering.

[65] NYNEX Compliance Plan at 6-8.

[66] *Id.* at 7.

[67] Letter from Martin J. Silverman, Washington Counsel, NYNEX, to William Tricarico, Secretary, Federal Communications Commission, Nov. 4, 1987.

[68] US West Compliance Plan (Nondiscrimination Procedures) at 6.

[69] *Id.* at 7.

[70] Letter from G. Michael Crumling, Director - Regulatory Affairs, US West, to William Tricarico, Secretary, Federal Communications Commission, Nov. 10, 1987.

[71] Southwestern Bell Compliance Plan at 23-26.

[72] *Id.* at 23.

[73] Southwestern Bell uses the term "analog switched special" to describe circuits that are dedicated from a customer's premises to the central office but terminate in a switch in the central office, such as WATS/800 circuits.

[74] This category, according to Southwestern Bell, consists of switched 56 Kbps and may also include future ISDN services.

[75] Letter from Karen S. Rogers, Director - Federal Regulatory, Southwestern Bell, to William Tricarico, Secretary, Federal Communications Commission, Oct. 30, 1987.

[76] PacTel Compliance Plan, Appendix II at 11-12.

[77] *Id.* at 12.

[78] Letter from J. H. Perez, Director - Federal Regulatory, PacTel, to William Tricarico, Secretary, Federal Communications Commission, Nov. 13, 1987.

[79] Bell Atlantic Compliance Plan, Attachment C at 1.

[80] *Id.* at 2.

[81] Letter from James J. Farrell, Executive Director - Federal Relations, Bell Atlantic, to William J. Tricarico, Secretary, Federal Communications Commission, October 29, 1987.

[82] *See* Ameritech Compliance Plan at 9.

[83] *Id.* at n. 7.

[84] *Id.* at 10.

[85] Letter from Michael S. Pabian, Attorney, Ameritech, to William Tricarico, Secretary, Federal Communications Commission, Nov. 20, 1987.

[86] IDCMA Comments at 8-11.

[87] *Id.* at 11.

[88] *Id.* at 15.

[89] *Id.* at 14.

[90] BellSouth Reply Comments at 7.

[91] Ameritech Reply Comments at 5-6. *See also* PacTel Reply Comments at 15- 16.

[92] US West Reply Comments at 2.

[100] Ameritech Reply Comments at 8.

[101] *Id. See also* Bell Atlantic Reply Comments at 4: "Because Bell Atlantic has a relatively small number of conditioned analog and high-speed digital circuits in operation, this level of detail would provide the Commission with little if any useful information.

[102] NYNEX also claims that its chosen categories are sufficiently broad to produce statistically meaningful data and to allow comparability between New York Telephone's and New England Telephone's reports. NYNEX Reply Comments at 4-6.

[103] Bell Atlantic Reply Comments at 4.

[104] *AT & T Plans Order* at para. 15.

[105] BellSouth claims to have addressed this concern by proposing to disaggregate private line services into design and nondesigned services, since nondesigned services represent the largest subcategory of its private line service. However, BellSouth does not substantiate its claim with hard data in its reply comments, nor does it address whether additional disaggregation is necessary or appropriate. *See* BellSouth Reply Comments at 8-9. None of the other BOCs even purports to address this concern in its pleadings.

[106] *Id. at 156, paras. 89, 94.*

[107] The Commission noted that although limited joint venture and prime contractor waivers have provided an opportunity for independent CPE vendors to market local exchange services jointly with their CPE offerings to certain classes of customers, "[t]here are . . . other classes of customers that do not come within the scope of these plans." 2 FCC Rcd at 156, para. 93. An advantage of sales agency programs, according to the Commission, is that these programs permit independent CPE vendors to marketId. at para. 92. In addition, as the Commission noted, "the commissions paid to independent CPE vendors under a joint marketing arrangement could provide a useful benchmark for assessing the reasonableness of a BOC's allocations of marketing and related expenses of providing CPE and network services on an integrated basis." *Id.*

[108] American Information Technologies Corp., BellSouth, and NYNEX, Interim Capitalization Plans for the Furnishing of Customer Premises Equipment and Enhanced Services, Memorandum Opinion and Order, 98 FCC 2d 943 (1984), *modified on reconsideration*, FCC 85-582 (released Nov. 15, 1985).

[109] For example, Southwestern Bell paid two thirds of its commissions during 1986 to unaffiliated vendors. Letter from John Atterbury, Vice President - Marketing, Southwestern Bell, to William J. Tricarico, Secretary, Federal Communications Commission, Feb. 10, 1987.

[110] As of June 1987, each of the other BOCs was paying more than half of its commissions to its CPE affiliates. *See* Letters to William J. Tricarico, Secretary, Federal Communications Commission, from Merlin Jenson, Director - Regulatory Affairs, US West, dated June 2, 1987; Roger Burge, Director - Federal Regulation, BellSouth, dated June 1, 1987; and Michael Pabian, Attorney, Ameritech, dated June 1, 1987. NYNEX, which is on different reporting schedule, has not yet filed its 1987 sales agency report; however, during the first half of 1986, New York Telephone paid less than 2% of its commissions to other vendors, while New England Telephone paid less than 15% of its commissions to other vendors. *See* Letter from Ronald H. Sirch, Executive Director, Federal Regulatory Matters, NYNEX, to Michael E. Wilson, Chief, Audits Branch, Common Carrier Bureau, dated June 13, 1986.

[111] In the *Sales Agency Order* and the *Sales Agency Reconsideration Order*, the Commission prohibited the use of a number of such criteria that it found would unduly restrict access to sales agency programs and were unnecessary to protect the legitimate interests of the BOCs in establishing sales agency relationships only with qualified CPE vendors. *See Sales Agency Order*, 98 FCC 2d at 957, para. 21; *Sales Agency Reconsideration Order* at para. 19 and Appendix A.

[112] BellSouth Compliance Plan (Marketing Plan for Independent CPE Vendors) at 2; Southwestern Bell Compliance Plan at 29.

[113] BellSouth Compliance Plan (Marketing Plan for Independent CPE Vendors) at 3.

[114] Bell Atlantic Addendum to Compliance Plan at 2.

[115] *Id.*

[116] *Id.* at 6.

[117] *Id.*

[118] PacTel Compliance Plan, Appendix III at 6-9; PacTel Reply Comments at 7- 10.

[119] PacTel Compliance Plan, Appendix III at 6.

[120] *See* PacTel Reply Comments at 8.

[121] PacTel Compliance Plan, Appendix III at 9; PacTel Reply Comments at 9- 10.

[122] PacTel Compliance Plan, Appendix III at 5-6.

[123] *Id.* at 12.

[124] PacTel Compliance Plan, Appendix III at 1-2.

[125] IDCMA Comments at 18-19.

[126] *Id.* at 18.

[127] *Id.* at 19.

[128] NYNEX Reply Comments at 9-10; BellSouth Reply Comments at 10-12; US West Reply Comments (Sales Agency) at 1-3; and Bell Atlantic Reply Comments at 5-6.

[129] BellSouth Reply Comments at 11; US West Reply Comments (Sales Agency) at 1, 3.

[130] IDCMA Comments at 21-22.

[131] *Id.* at 20-21.

[132] *Id.* at 22-23.

[133] Bell Atlantic Reply Comments at 7.

[134] *Id.* at 8.

[135] IDCMA Comments at 24-25.

[136] NATA Comments at 20.

[137] *Id.* at 27-28.

[138] IDCMA Comments at 24; NATA Comments at 13-15.

[139] NATA Comments at 15-16.

[140] PacTel Reply Comments at 7.

[141] *Id.* at 7, 11.

[142] *Id.* at 5-6.

[143] *Id.* at 3-4.

[144] Moreover, if Bell Atlantic can objectively determine the network sales and revenues that are directly attributable to its Vendor Support program, Bell Atlantic should include this information in its reports.

[145] We will attempt to review this amendment on an expedited basis, so as to allow PacTel to implement structural relief as soon as possible thereafter. Our ability to provide such expedited review will be enhanced to the extent PacTel proposes a joint marketing program that is similar to one or more of the other BOCs' programs.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

CONTEL CELLULAR OF
EL PASO, INC.,
Complainant,

v. File No. E-86-93

SOUTHWESTERN BELL
TELEPHONE COMPANY,
Defendant.

AMENDED ORDER

Adopted January 20, 1988; Released January 29, 1988

By the Deputy Chief, Enforcement Division, Common Carrier Bureau:

1. On June 11, 1986, Contel Cellular of El Paso, Inc. (Contel) filed a formal complaint against Southwestern Bell Telephone Company (SW Bell) alleging that SW Bell's attempt to impose recurring charges for the assignment of a NXX code to Contel violated Section 202(a) the Communications Act, 47 U.S.C. § 202(a). SW Bell denied such allegations and moved to dismiss the complaint. After the pleading cycle ended, the parties entered into negotiations, including consultation with the Enforcement Division, aimed at settling the matters in controversy. By letter dated December 21, 1987, counsel for the plaintiff advised the Commission that the parties had resolved all matters pertaining to charges for assignment of NXX codes and requested permission to withdraw its complaint without prejudice. An order granting this request was released on January 15, 1988 (DA 87-1855).

2. A further matter in this proceeding requires resolution. Petitions to intervene have been filed by Texas non-wireline cellular telephone carriers serving Houston, Dallas, Austin, El Paso and San Antonio, including the Cellular Telecommunications Division of Telocator Network of America, Charisma Communications Corporation, and Maxcell Telecom Plus, Inc., respectively. These petitioners raised matters collateral to those raised by Contel, and their concerns may not necessarily have been resolved by the settlement reached herein. Therefore, we are dismissing without prejudice their petitions to intervene. The petitioners are free to raise any unresolved matters in an independent complaint if warranted by the circumstances. In this regard, SW Bell is directed to retain for a period of six months all cost-study materials developed in connection with this proceeding.

3. Accordingly, IT IS ORDERED that the order released on January 15, 1988 (DA 87-1855) is affirmed.

4. IT IS FURTHER ORDERED that the above-referenced petitions to intervene ARE DISMISSED without prejudice.

5. IT IS FURTHER ORDERED that SW Bell retain for inspection for a period of six months cost-study materials developed in connection with this proceeding.

FEDERAL COMMUNIATIONS COMMISSION

Howard M. Wilchins
Deputy Chief, Enforcement Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Waiver of Sections 90.621(d), 90.623(a), 90.629, 90.633, and 90.651(c) of the Commission's Rules to License Use of Six Conventional 900 MHz Frequency Pairs for an Advanced Train Control System	Application File Nos. 551211 *et al.*

ORDER

Adopted: January 14, 1988; Released: January 29, 1988

By the Commission:

I. INTRODUCTION

1. By this Order, the Commission takes an action of great importance to American railroads, their passengers, and their shippers. The Association of American Railroads (AAR) asks that we authorize it to use six specific frequency pairs in the 900 MHz band to construct an "Advanced Train Control System." This system would be the largest and most complex land mobile communications system in the world. It would automate rail operations nationwide, enabling railroads to operate more safely, efficiently, and economically. Upon review of the record, we have decided to waive five sections of the Commission's Rules to permit construction and operation of this system.

II. BACKGROUND

2. AAR, an association representing virtually every major American railroad, filed 756 land mobile license applications between December 29, 1986 and March 31, 1987. AAR requests licenses for 2,059 base stations and 30,000 mobile units in the 900 MHz spectrum.[1] AAR plans to file additional applications for approximately 941 more base stations. If its applications are granted, AAR will construct an innovative railroad communications system using radio and computer technology.

3. The present railroad control system, which has been in use for many years, consists primarily of operating rules, written regulations, and electronic, electric, and manual signal systems. The new system would be a significant improvement. It would automatically determine the position and speed of trains across the country, operate switches, alert dispatchers and engineers to potential safety hazards, and even take control of locomotive throttles and brakes to prevent accidents. AAR intends for the system to extend nationwide and to connect with a similar system being built in Canada. AAR developed its plan in conjunction with its Canadian counterpart, the Railway Association of Canada (RAC). RAC has applied to the Canadian Department of Communications to operate a similar system on the same frequencies in Canada.

4. The Advanced Train Control System would use six conventional 900 MHz frequency pairs allocated for land mobile use in General Docket 84-1233.[2] Specifically, it would use frequencies in the bands 896-901 MHz and 935-940 MHz in the Industrial/Land Transportation Pool.[3] The frequencies would be used to transfer large volumes of data between locomotives, work crews, and computerized control centers. The information would be analyzed by computer and necessary action would be taken to improve operations or to prevent potential problems. For example, the system might slow or stop a locomotive, move a switch, or re-route a work crew. Many aspects of the system would be automated, thereby reducing the chance for human error. While the system would have voice capability, it would be used primarily for digital data transfer.

5. On a busy rail line the system might work as follows. At the beginning of a work day the engineer would proceed to the lead locomotive and use a plastic identity card to "book on" to the system. A computer on the locomotive would display route information such as the location of track work, areas in which the train should reduce speed, railroad cars to be picked up enroute, and the route profile. Before departure, a safety computer at the control center would compare the train's proposed movements to movements approved for other trains throughout the system. The computer at the control center also would check track integrity and switch settings. If no conflicts were found, the control center would authorize the train's movements and download this information by radio to the computer on the locomotive. If necessary, the control center would update or modify this information during the train's route.

6. At frequent intervals during the route, the train's onboard computer would radio the train's location to the control center. The train's computer would also calculate the speed necessary to meet schedules and to ensure safety. If the train were to exceed its desired speed by more than a small margin the engineer would be warned immediately. If the engineer did not apply the brakes, they would be applied automatically. Aside from the apparent safety benefit of this feature of the system, it also would have a major economic benefit. Since power would be cut to trains that were ahead of schedule, the railroad industry estimates that it would save approximately $100 million in fuel costs per year. The communications system would also enable work crews, using portable terminals, to monitor train locations. This would protect them from oncoming trains and allow them to work safely on the tracks.

III. DISCUSSION

7. We have examined the information before us and conclude that we should waive several sections of our Rules to facilitate development of the Advanced Train Control System. It has consistently been the Commission's policy to encourage advancements in communications system design. *See, e.g., IBM Research and Development, Inc.*, FCC No. 83-104, slip op. (released March 14, 1983). The Advanced Train Control System is a technically advanced, nationwide, integrated communications network that promises to revolutionize the way that railroads are managed and operated. It is the product of five years of planning, testing, and cooperation between American and Canadian railroads. The U.S. government agency responsi-

ble for setting railroad safety standards has recognized the value of automatic train control and considers the Advanced Train Control System to be more modern, efficient, and cost effective than alternative safety systems available to the railroads.[4] Federal Railroad Administration, Report and Proposed Orders on Automatic Train Control on Northeast Corridor Carriers, 52 Fed. Reg. 19620 (May 26, 1987), *final orders adopted* 52 Fed. Reg. 44510 (November 19, 1987). According to the Federal Railroad Administration, an automatic train control system might have prevented the January 1987 accident in Chase, Maryland which caused 16 deaths, 170 injuries, and will cost the railroads an estimated $40 to $50 million. 52 Fed. Reg. 44510, 44512 (November 19, 1987).

8. By taking action to facilitate construction of the Advanced Train Control System, we will further the goals of the Communications Act of 1934. The Communications Act directs us "to make available. . . a rapid, efficient, Nation-wide, and world-wide wire and radio communications service. . . for the purpose of promoting safety of life and property." 47 U.S.C. § 151. The Act also directs us to regulate private land mobile services in a manner that will "promote the safety of life and property." 47 U.S.C. § 332(a)(1). The Advanced Train Control System promises to further these Commission directives by using communications technology to improve railroad safety and efficiency. The proposed system will use thousands of radio links to connect the nation's railroads with sophisticated central computers. Such a centralized, nationwide system will reduce the potential for human error and enable railroads to make quick operating decisions. The system is far superior to the existing railroad signaling system and will improve railroad safety and efficiency dramatically.

9. Although the Advanced Train Control System significantly furthers the Commission's overall objectives, a few of the system's operating requirements cannot be met under our existing Rules. AAR asks the Commission to waive these Rules.

A. Number of Channels

10. The Advanced Train Control System is designed to operate on six frequency pairs. Under Section 90.623(a) of the Commission's Rules, however, no more than five channels may be assigned to a licensee for operation in the conventional mode in a given area. 47 C.F.R. § 90.623(a). AAR explains that the six conventional channels are needed to serve the large number of railroads operating in the United States. As designed, AAR's system would divide the six channels into two separate communications systems with three channels apiece. Within each of the communications systems one channel will be used to download large data files from the railroad dispatch center to locomotives. The second channel will be used to transfer operational data critical to safety. The third channel will provide data communications to locomotives as they move down railroad rights-of-way. In areas served by two railroads, each railroad will use its own separate three channel communications system. In areas served by more than two railroads, it will be necessary for the railroads to share the communications systems.

11. The Rules currently place a five channel limitation on conventional systems in order to promote trunking. Typically, a trunked system uses the radio spectrum more efficiently than a conventional system because the trunked system uses computer technology to locate and assign the first available channel on the system. AAR argues, however, that trunking is not well suited to its system. To accomplish all of its operational and safety requirements, AAR would dedicate channels for specific functions. Since each channel would be dedicated, trunking technology capable of assigning alternate channels would not increase system efficiency. We believe that the conventional system which AAR proposes for data communications is warranted by the unique requirements of this system. In essence, the planned system consists of two systems of three channels each, and there would be little, if any, advantage in using trunking for each of these systems. Accordingly, in view of the public interests involved, especially the improved safety of railroad operations, we shall waive the requirements of Section 90.623(a) to permit the Advanced Train Control System to utilize six conventional channels.

B. Time for Construction

12. AAR asks for additional time to construct its system. licensee of a conventional system usually is given eight months from the date it is licensed in which to place its system in operation. 47 C.F.R. § 90.633(c) and (d). An applicant in the Industrial/Land Transportation Pool that shows adequate justification may be given up to three years to construct a system. 47 C.F.R. § 90.629(a). AAR states that it will need ten years to complete the Advanced Train Control System. AAR cites the size and complexity of its project as well as limitations with present 900 MHz equipment as the major factors contributing to its need for additional time.

13. In determining the time in which an applicant must place its system in operation, the Commission considers a number of factors. For example, if a system serves a large number of mobile units, is complex, and is a coordinated area-wide system requiring additional time for planning, funding, and construction, the Rules would favor extending the time in which it must be constructed. 47 C.F.R § 90.629(a).

14. The Advanced Train Control System satisfies the criteria for an extended implementation schedule. The system will serve approximately 30,000 mobile units across the country. It will be extremely complex, capable of automating the entire railroad industry. It will be a substantial undertaking constructed at a cost exceeding $1.5 billion. Moreover, it will be a coordinated nationwide system connecting many separate railroad companies in the United States and Canada.

15. The system's planning and design stage is almost complete and AAR hopes to begin actual construction shortly. In 1988 AAR plans to build at least 120 base stations in the Mid-West section of the country and an additional 20 in other parts of the country. In 1989 and 1990, it plans to build 270 more base stations in the Mid-West and Rocky Mountain areas of the country and additional base stations in other regions. By 1991, AAR anticipates that at least 790 base stations (slightly less than one-third of the total system) will be complete.[5] AAR will construct the portions of the system in large urban areas first and will construct the sections in less populated areas last. AAR appears to be making a good faith effort to complete this intricate system as quickly and efficiently as possible. Under the circumstances, we believe there is good cause to waive the Rules concerning construction deadlines. We shall grant AAR a period of ten years from the release date of this Order in which to complete its project.

C. Reporting Requirements

16. Next, we shall examine the reporting requirements in the Rules. All licensees of conventional systems above 800 MHz must file a loading report with the Commission within eight months of licensing. 47 C.F.R. § 90.651(c). A licensee authorized to follow an extended implementation schedule must submit annual progress reports. 47 C.F.R. § 90.629(b). If a licensee does not meet the implementation schedule, its license or the exclusivity of that license will be canceled automatically. *Id.*

17. We are not requiring AAR to complete the system within eight months. We shall, therefore, waive the requirement in Section 90.651(c) that it file an eight month loading report. We shall require AAR to file annual construction progress reports pursuant to Section 90.629(b). In light of the great magnitude of this project and its corresponding public benefit, however, we shall partially waive the requirements in Section 90.629(b) so that the automatic cancellation provision will not apply. AAR will be building an extensive system over a long period of time. It may be difficult for AAR to follow the implementation schedule to the letter, and we shall not cancel its authorizations for minor deviations. We intend to monitor the progress of this project, however, and to make whatever adjustments to AAR's authorizations are necessary to ensure that the spectrum is used in the public interest.

D. Exclusivity

18. AAR requests exclusive use of the six channels at present and future train control locations nationwide. The Rules do not provide for "nationwide exclusivity." Rather, a license to operate a base station on a particular channel is considered exclusive if no other licensee may locate another base station operating on that channel within 70 miles.[6] 47 C.F.R. § 90.621(d). The Commission will grant such exclusivity for a conventional system if the licensee "loads" each channel with a minimum of 70 mobile units. 47 C.F.R. §§ 90.625(a) and 90.633(a). In large metropolitan areas, AAR believes it will meet these loading requirements. Nationwide, however, AAR's average number of mobile units per channel will be fewer than required for exclusivity.

19. AAR's request for exclusivity is based on three concerns. First, AAR believes that use of the six frequencies by others would cause interference to train control operations. Such interference would diminish the reliability and safety benefits of the Advanced Train Control System. Second, AAR wishes to expand the Advanced Train Control System beyond the 2,059 base stations in its applications but is unable to identify the locations of its additional base stations at present.[7] Since each of the base stations in AAR's system must operate on the same six frequencies, AAR urges the Commission not to license these frequencies to other applicants whose systems could use alternative frequencies. Finally, AAR anticipates that it may need to move the location of a base station or add an additional base station to attain optimal coverage in some areas. AAR would not have this flexibility if its new base location fell within the zone of protection of another licensee.

20. AAR raises valid concerns and we agree that AAR should be able to operate its system free from interference in all locations necessary to serve the railroads. After careful consideration, however, we believe that we can address AAR's concerns without granting the broad waivers that it requests. For example, it is not necessary for us to waive loading requirements. In major metropolitan areas, where competing demand for the six channels would be greatest, AAR's associated base stations will serve the requisite number of mobiles to achieve exclusivity. In non-urban areas, where AAR's loading would be lowest, sufficient spectrum exists to satisfy the needs of other Industrial/Land Transportation eligibles without using the six channels that AAR needs. It is also unnecessary for us to grant AAR exclusive use of the frequencies nationwide because there are areas where AAR will have no need for the frequencies.

21. To address AAR's concerns we shall take the following action. During the ten year construction period, we shall establish an 80 mile zone of protection around each site for which AAR is licensed. Since this zone is ten miles more than the usual separation between co-channel stations, AAR will have the flexibility to move any base station up to ten miles from the original site.[8] During AAR's ten year construction period we will not license other applicants to use the six frequencies in areas where AAR has proposed to build its system. In areas outside this 80 mile zone of protection, we will require eligible users to use alternative 800 and 900 MHz frequencies before applying for the six frequencies which AAR has specified. This requirement is unlikely to have any effect because demand for spectrum tends to be low in rural areas. Also, as a practical matter, we believe that demand for these six Industrial/Land Transportation channels will be limited because eligibility in the Industrial/Land Transportation Pool is restricted to a relatively small group of companies with specialized communications needs. In the unlikely event that no alternative frequencies are available in these unprotected areas, however, we will consider applications for the six frequencies. This will give AAR the flexibility that it needs to identify additional base locations while allowing others to use the six channels if no alternative frequencies are available in a particular area.

22. At the end of the construction period we will require AAR to submit a final report to the Commission identifying the locations of all base stations and the number of mobile units associated with those stations. For those stations that meet loading requirements, the Commission shall afford AAR exclusivity in the form of a normal zone of protection. For those stations that do not meet the requisite loading requirements for exclusivity, we will consider applications from other compatible users who wish to use any of the six channels. An applicant will be considered compatible if its operations would not threaten rail safety. Due to the importance of AAR's proposed system and AAR's intent to extend it to future locations, the Commission will continue to require other applicants to use any remaining 800 MHz and 900 MHz frequencies for which they are eligible before considering them for the six frequencies requested by AAR.

V. PAPERWORK REDUCTION STATEMENT

23. The decision contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure or record retention requirements, and will not increase or decrease burden hours imposed on the public.

VI. ORDERING CLAUSE

24. Accordingly, pursuant to Sections 1.3, 1.103, and 90.151 of the Commission's Rules, and in view of the discussion above, IT IS ORDERED THAT:

(1) The provisions of 47 C.F.R. § 90.623(a) are hereby waived to permit the Advanced Train Control System to utilize the following six frequency pairs in the conventional mode: (a) 896.8875/935.8875 MHz; (b) 896.9375/935.9375 MHz; (c) 896.9875/935.9875 MHz; (d) 897.8875/936.8875 MHz; (e) 897.9375/936.9375 MHz; and (f) 897.9875/936.9875 MHz;

(2) The Private Radio Bureau shall take action consistent with this Order to license the Association of American Railroads (AAR) to use the frequencies identified above;

(3) The provisions of 47 C.F.R. §§ 90.629, 90.633(c), and 90.633(d) are hereby waived to grant AAR ten years from the release date of this Order to complete construction of the Advanced Train Control System and to put the system into full operation;

(4) The reporting requirements in 47 C.F.R. § 90.651(c) are hereby waived and the reporting requirements in 47 C.F.R. § 90.629(b) are partially waived, as set forth in this Order;

(5) The provisions of 47 C.F.R. § 90.621(d) are hereby waived during the ten year construction period to afford AAR an 80 mile zone of protection around each base station location proposed. After the construction period a normal zone of protection shall apply to those base stations that meet the loading requirements in 47 C.F.R. §§ 90.625(a) and 90.633(a). No zone of protection shall be given automatically to those base stations that do not meet loading requirements at the end of the construction period but specific requests for protection will be considered at that time;

(6) The six frequency pairs identified above shall be made available to other compatible users, subject to the conditions discussed in this Order.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster III
Acting Secretary

FOOTNOTES

[1] Prior to filing the applications with the Commission, AAR completed frequency coordination with the Special Industrial Radio Service Association, Inc. (SIRSA), the certified coordinator for the 900 MHz Industrial/Land Transportation Service. With its first group of applications (File Nos. 551211 through 551308) AAR included a letter briefly explaining its plan. Letter from L. M. Himmel, Sr., Executive Director, Communications and Signal Division, AAR to Gary L. Stanford, Chief, Licensing Division, Private Radio Bureau, FCC (December 1, 1986). At that time, AAR also submitted a document discussing the system's operating requirements. Railway Association of Canada and Association of American Railroads, Advanced Train Control Systems: Operating Requirements (April 1984). At the Commission's request, AAR also submitted additional information at a later date. Letter from L.M. Himmel, Sr., Executive Director, Communications and Signal Division, AAR to Technical Section, FCC (May 25, 1987) (hereinafter cited as Supplemental Filing).

[2] Report and Order, Gen. Docket Nos. 84-1231, 84-1233 and 84-1234, 2 FCC Rcd 1825 (1986), *recon. denied*, 2 FCC Rcd 2515 (1987) (licensing issues), 2 FCC Rcd 6830 (1987) (allocation issues).

[3] The Industrial Land Transportation Pool includes railroad users. The six frequency pairs AAR requests are: (1) 896.8875/935.8875 MHz; (2) 896.9375/ 935.9375 MHz; (3) 896.9875/935.9875 MHz; (4) 897.8875/936.8875 MHz; (5) 897.9375/936.9375 MHz; and (6) 897.9875/936.9875 MHz.

[4] The Advanced Train Control System is more advanced and uses different technology than "automatic train control" systems which are presently in use on passenger trains in the Northeast Corridor. Existing automatic train control systems do not use the radio spectrum, but rather use electrical charges in railroad tracks to stop trains that exceed speed limits. Automatic train control systems are not possible on a nationwide basis because they are too costly to install. The Federal Railroad Administration has issued a Notice of Inquiry into the use of radio communications for rail safety. 51 Fed. Reg. 40101 (November 4, 1986).

[5] AAR's implementation schedule indicates that the cumulative number of base stations to be completed by the end of each year are: 138 in 1988; 290 in 1989; 515 in 1990; 790 in 1991; 1,140 in 1992; 1,540 in 1993; 1,990 in 1994; 2,380 in 1995; 2,740 in 1996; and 3,000 in 1997. Supplemental Filing, Attachment D. The implementation schedule specifies the number of stations to be completed but leaves the locations of the stations constructed in a particular year to AAR's discretion. It is our understanding that AAR will be putting portions of its system into operation as those portions are constructed.

[6] Separations of less than 70 miles will be considered exclusive where the service areas, terrain, or other factors warrant reduction. 47 C.F.R. § 90.621(d).

[7] AAR cannot specify locations near the Mexican and Canadian borders because the United States has not yet reached an agreement with these countries concerning use of the frequencies. AAR also cannot identify the specific number of base stations needed to cover many areas or the exact locations of these stations because such factors may vary with terrain, building heights, and other conditions specific to a particular area.

[8] If AAR needs to move a base station it will need to follow the standard procedures for modifying a license including frequency coordination and, if applicable, preparing an environmental impact statement and/or notification to the Federal Aviation Administration. *See* 47 C.F.R. §§ 1.1305, 17.7, and 90.175.

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: January 19, 1988

INSTRUCTIONS FOR FILING OPEN NETWORK ARCHITECTURE PLANS-- BELL OPERATING COMPANIES AND AMERICAN TELEPHONE & TELEGRAPH COMPANY; Pleading Cycle Set For Public Comment on Plans (CC Docket No. 88-2, Phases I and II)

The Bell Operating Companies (BOCs) and American Telephone & Telegraph Company (AT&T) must file Open Network Architecture (ONA) Plans with the Commission on or before February 1, 1988, as required in the Computer III proceeding (Phase I Order, 104 FCC 2nd 958 (1986), *recon.*, 2 FCC Rcd 3035 (1987), further recon. adopted Jan. 14, 1988). This Notice provides instructions to the BOCs and AT&T for filing the Plans, and also sets the pleading cycle for public comments on the Plans.

Each ONA Plan should describe the carrier's compliance with the ONA requirements and list its initial set of Basic Service Elements. Commission approval of a carrier's ONA Plan is a precondition to the removal of structural separation for that carrier's enhanced service operations. After a carrier implements an approved ONA Plan and satisfies the Commission's cost allocation requirements and other safeguards, structural separation will no longer apply to the carrier's enhanced services operation, and it will not be required to file a service-specific Comparably Efficient Interconnection Plan prior to introducing a new enchanced service.

In filing the plans, the BOCs' ONA Plans should be captioned "In the Matter of Filing and Review of Open Network Architecture Plans, CC Docket No. 88-2, Phase I", and AT&T's ONA Plan should be captioned "In the Matter of Filing and Review of Open Network Architecture Plans, CC Docket No. 88-2, Phase II". Plans are to be filed with the Secretary, FCC, 1919 M Street, N.W., Washington, D.C. 20554, in accordance with Section 1.419(b) of the Commission's rules, 47 C.F.R. §1.419(b) (1986). In addition, seven copies must be filed with the Policy and Program Planning Division, Common Carrier Bureau, FCC, Room 544, 1919 M Street, N.W., Washington, D.C. 20554, and one copy should be delivered to the Commission's contractor for public records duplication: International Transcription Services, Inc. (ITS), 2100 M Street, N.W., Suite 140, Washington, D.C.

Furthermore, the Commission requests public comment on the Plans that are filed on February 1, 1988. Comments on the Plans are due on or before **April 8, 1988,** and reply comments are due on or before **May 18, 1988.** Parties filing comments or reply comments on the Plans are to follow the filing procedures described above for the Plans, including providing seven copies of all pleadings to the Policy and Program Planning Division, Common Carrier Bureau, Room 544, 1919 M Street, N.W., Washington, D.C. 20554.

For further information contact Peggy Reitzel, Policy and Program Planning Division, Common Carrier Bureau, at (202) 632-4047.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: January 14, 1988

PLEADING CYCLE ESTABLISHED ON NATIONAL EXCHANGE CARRIER ASSOCIATION PETITION FOR WAIVER OF RULES ON EQUAL ACCESS COST RECOVERY

On December 22, 1987, the National Exchange Carrier Association (NECA) filed a Petition seeking a waiver of Sections 67.193(a) and 67.421(a) of the Commission's Rules to permit members of the NECA Traffic Sensitive (TS) cost pool to include certain expenditures in the equal access cost category for separations purposes. NECA also asked that participants in the TS pool be allowed to recover non-capital equal access expenditures in the year in which they are incurred, rather than amortize these costs over a multi-year period, ending December 31, 1993, as presently required.

The Commission's Rules currently contain a narrowly drawn definition of equal access costs, providing, among other things, that expenditures for the installation of equal access capability may be included in this category for separations purposes only if the local exchange carrier (LEC) serves competitive interexchange carriers (IXCs) or has received a bona fide request for conversion to equal access. NECA requests that TS pool members be allowed to include in this category expenditures for the installation of equal access capability made in the absence of competition or a bona fide request for equal access if this capability is added in conjunction with conversion to a stored program control switch.

NECA states that by the end of 1987, the overwhelming majority of telephone access lines will have been converted to equal access, with a large portion of the non-converted lines located in rural areas served by smaller LECs. NECA argues that grant of the requested waivers would: (1) encourage these LECs to install equal access capability in an efficient manner; (2) make the benefits of full interexchange competition more widely available in rural areas; and (3) permit recovery of these costs on a current basis. In particular, NECA states that the present rules create a disincentive for installation of equal access capability in conjunction with an upgrade to digital switching equipment unless the LEC serves competitive IXCs or has received a request for implementation of equal access. NECA argues that there are sound reasons for installing equal access capability in conjunction with a switch upgrade, citing a number of instances in which this was substantially less expensive than retrofitting the offices to provide equal access at a later date. NECA also points out that in these cases the incremental cost of installing equal access capability was a very small portion of the total expenditures.

In support of its request for waiver of the current equal access amortization requirement as applied to members of the TS cost pool, NECA states that there is no reason to expect that these LECs would have equal access conversion costs that are significantly higher than those of carriers previously granted waivers.

Interested parties may file comments concerning this petition with the Secretary, Federal Communications Commission, on or before **February 12, 1988.** Reply comments are to be filed on or before **February 26, 1988.** A copy of each filing should be provided to the Commission's contractor for public records duplication, International Transcription Services, Inc. (ITS), Suite 140, 2100 M ST., N.W., Washington, D.C. 20037, and to Diane Shaw-Gill, Accounting and Audits Division, Common Carier Bureau, FCC, 1919 M St., N.W., Washington, D.C. 20554. Copies of the NECA petition can be obtained from ITS by calling (202) 857-3800. For further information contact Diane Shaw-Gill at (202) 632-7500.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Ameritech Operating Companies' Permanent Cost Allocation Manual for the Separation of Regulated and Nonregulated Costs	AAD 7-1668

MEMORANDUM OPINION AND ORDER

Adopted: December 28, 1987; Released: January 29, 1988

By the Chief, Common Carrier Bureau:

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I. INTRODUCTION AND BACKGROUND

1. On July 27, 1987, the Ameritech Operating Companies (Ameritech)[1] filed a cost allocation manual pursuant to the *Joint Cost Order* [2] governing the accounting separation of Ameritech's regulated and nonregulated costs. Consistent with the requirements of the *Joint Cost Order*, the manual is intended to be used on and after January 1, 1988, the same day that the revised Uniform System of Accounts (USOA) is scheduled to become effective. [3] The manual includes a list of Ameritech's nonregulated activities, a list of activities Ameritech treats as incidental to regulated for accounting purposes, information on affiliate transactions, information on employee time records, and information describing the allocation of each revised USOA account between regulated and nonregulated activities. As part of its cost allocation proposals, Ameritech also submitted a Motion for Waiver requesting that Section 64.901(b)(4) of the Commission's rules be waived to permit investment in Packet Assembler/Dissembler (PAD) equipment to be allocated based on two-year forecasts of use rather than employing forecasts that extend to the depreciable life of the equipment.

2. Six parties filed comments on the Ameritech manual and Ameritech filed a response.[4] In addition to reviewing the pleadings, we have conducted our own review of the Ameritech manual for consistency with the Commission's rules. We have concluded that the format and content of the Ameritech manual generally permits us to make an informed judgment as to the ability of the manual to discourage cross-subsidy. We find that, overall, Ameritech's manual provides sufficient assurance against the misallocation of costs and revenues to permit its implementation on January 1, 1988.

3. We require, however, that in a number of specific instances, Ameritech specify in greater detail the procedures it intends to follow in allocating the costs and revenues of regulated and nonregulated activities, and to correct other ambiguities and omissions in its manual. We shall require Ameritech to submit revisions to its manual, and we shall solicit public comment on the revisions. Depending upon responses to our requests for further information, additional changes to the manual may be ordered at a later date. Any amendments to the manual that result from the instant Order approving the manual or a subsequent order concerning the revisions, shall be made retroactive to January 1, 1988. Requiring that all amendments to the manual be retroactive eliminates the necessity of having a manual that is fully approved in advance implementation date. We therefore approve Ameritech's cost allocation manual subject to a number of conditions and requests for further information.[5] We deny, for the reasons discussed below, Ameritech's Motion for Waiver.

4. This Order is divided into three substantive sections. Section II discusses general issues raised by the parties, including portions of the manual that relate to incidental activities, nonregulated activities, and affiliate transactions. Section III discusses issues raised in connection with proposed apportionment methods and specific accounts. Section IV contains a discussion of the procedural issues raised by parties, as well as information concerning the procedural requirements for updating cost allocation manuals and other procedural matters.

II. GENERAL ISSUES

A. Overall Sufficiency of the Manual

5. The *Joint Cost Order* listed five types of information that must be included in the cost allocation manuals: (a) a description of each of the company's nonregulated activities; (b) a list of all the activities to which the company now accords incidental accounting treatment, and the justification for treating each as incidental; (c) a chart showing all corporate affiliates; (d) a statement identifying affiliates that engage in or will engage in transactions with the carrier entity and describing the nature, terms, and frequency of such transactions; and (e) for each USOA account and subaccount, detailed specifications of the cost categories (or cost pools) to which amounts in the account or subaccount will be assigned, and of the basis on which each cost category (or pool) will be apportioned.[6] The Commission also required that the manuals include a de-

scription of the methods used to teach, monitor, and enforce accurate time reporting, along with a description of the allocation of nonproductive time.[7]

6. The Commission found that the level of detail reflected in the selection of cost categories should be governed by the extent of the carrier's involvement in nonregulated activities. In addition, the number of categories employed should be dictated by the costs of developing additional cost categories and whether additional categories would in fact yield more accurate allocation results. Finally, the Commission noted that, in determining the number of categories, carriers should keep in mind that some degree of importance must be attached to the relative stability of the cost pools in order for the cost allocation manuals to be administered on an orderly basis over time.[8]

7. MCI argues that Ameritech's manual fails to describe cost data and processes in sufficient detail to permit adequate review of the manual. It states that Ameritech should have provided information on the "precise mechanics" of its proposed cost allocation methodologies. According to MCI, the level of detail presented in the Ameritech manual does not even rise to the level of detail found in jurisdictional separations procedures. MCI states that while the Ameritech manual mentions subaccounts, the manual does not provide information describing the subaccounts, their relative values, or the procedures to book costs to them. Furthermore, MCI complains that Ameritech does not provide any detail on the nature of "special studies" it proposes to use to allocate accounts. MCI also argues that Ameritech must state how it proposes to forecast costs for those network plant accounts that must be allocated based on peak relative nonregulated use.[9] Finally, MCI complains that Ameritech should provide information on how much cost is being allocated pursuant to a particular allocator.[10]

8. Ameritech argues in response that most of MCI's complaints attack the requirements of the *Joint Cost Order*, and are beyond the scope of the manual review process. Ameritech also defends the level of detail in its manual as being fully consistent with Commission requirements, and argues that it is much more thorough in its treatment of costs than is the jurisdictional separations manual.[11]

9. Our analysis of Ameritech's manual reveals a number of ambiguities and omissions, but we believe that these problems may be readily cured by the submission of additional information and amendments. Our assessment of the sufficiency of the Ameritech manual has focused on whether the manual addresses the subject-matter areas required by the Commission, and whether cost apportionment information is provided in enough detail for us to determine if cost allocations will be performed in a manner that discourages cross subsidization. This latter determination requires that the manual first provide a clear understanding of the basis upon which cost pools are formulated. So long as cost pools will be apportioned between regulated and nonregulated activities using different allocators, decisions about how costs are collected into pools or categories are a key determinant of ultimate cost allocation results. The manual also must provide a clear understanding of how the costs reflected in cost categories will be apportioned between regulated and nonregulated activities. In a number of specific instances, the Ameritech manual does not provide the level of understanding necessary to comprehend how cost pool apportionment and cost allocations are being performed. In addition, although the manual contains all of the required subject-matter areas, in some cases the information provided is insufficient for us to determine whether Ameritech will be in compliance with the Commission's rules. However, we do not believe that the manual is so patently deficient as to warrant its rejection. The addition of greater detail and explanation should serve to resolve our questions.[12] We therefore require Ameritech to submit additional information in the form of revisions to its manual as a condition of our approval. We will also permit public comment on any changes that Ameritech makes to its manual as a result of this Order. In order to provide guidance to Ameritech in fashioning its revisions, we will address each of the issues raised by the commenting parties, along with additional issues we ourselves have identified.[13]

B. Affiliate Transactions

10. The *Joint Cost Order* created specific rules governing affiliate transactions. The rules were intended to prevent carriers from avoiding the cost allocation rules, and the investment risk balance created by those rules, by engaging in affiliate transactions in which the carrier provides an asset or service at a rate below its cost, or obtains an asset or service at a rate above its affiliate's cost.[14] Rules governing transactions between a carrier and its affiliate are different depending upon whether the transaction involves a transfer of assets or the provision of a service.[15] In the case of assets, transactions between affiliates should be recorded at the prevailing price held out to the general public. If no prevailing price is available, asset transactions from the affiliate to the carrier should be recorded at the *lower* of net book cost or fair market value. Asset transactions from the carrier to the affiliate should be recorded at the *higher* of net book cost or fair market value. In the case of services, a tariff or prevailing price also determines the amount to be recorded in the carrier's books of account. If no tariff or prevailing price is available, the cost of the service should be allocated pursuant to the cost allocation standards of Section 64.901 of the *Joint Cost Order* also required that carriers include in their cost allocation manuals "[a] statement identifying affiliates that engage in or will engage in transactions with the carrier entity and describing the nature, terms, and frequency of such transactions."[17]

11. *Status of Bellcore*. Ohio argues that Ameritech failed to include Bell Communications Research, Inc. (Bellcore) as an affiliate for the purposes of the manual. Ohio faults Ameritech's analysis, contained in a July 27, 1987 cover letter accompanying the filing of the manual, which states that based on the Investment Company Act of 1940, Ameritech's one-seventh interest in Bellcore does not give rise to an incidence of ownership. Ohio states that the Investment Company Act of 1940 merely creates a presumption of non-ownership, that can and should be rebutted in the case of Bellcore.[18]

12. BellSouth and Ameritech disagree, arguing that Bellcore should not be treated as an affiliate. BellSouth argues that under the revised USOA, Bellcore does not fall within the definition of affiliate, because none of the seven regional Bell companies individually controls Bellcore.[19] Ameritech argues that even if Ohio's legal argument concerning the Investment Act of 1940 is correct, Ohio has failed to rebut the presumption that Ameritech does not control Bellcore.[20]

13. This affiliation issue affects each of the seven regional Bell companies.[21] Bellcore was created by the divestiture of the Bell Operating Companies (BOCs) from AT&T and is intended to serve as a central services organization with responsibilities for centralized network planning, among other duties. Each of the seven regional companies has an equal ownership interest in Bellcore and only those companies may participate in it.

14. Due to its unique history and ownership structure, Bellcore is therefore very different from other entities in which the regional Bell companies might hold a one-seventh interest. If Bellcore were to be treated as a nonaffiliate for the purposes of the cost allocation and affiliate transactions rules, the organization could potentially serve as a vehicle for circumventing the cost allocation standards and affiliate transaction standards that the Commission has so carefully constructed. In deciding how to categorize Bellcore, our goal is to provide for cost manual implementation that is both logical and consistent with the Commission rules. Even though each regional company has "only" a one-seventh interest in Bellcore, its unique ownership structure presents the same potential for avoidance of our cost allocation rules that led the Commission to adopt the rules regarding affiliates that are wholly owned or controlled by a carrier. Ameritech must therefore amend its manual to include Bellcore as an affiliate, and provide all the necessary information about its transactions with Bellcore.[22]

15. *Need for additional information.* In addition to the Bellcore issue raised by Ohio, IBM argues that the affiliate transactions section of the manual does not permit a determination of whether Ameritech is in compliance with the Commission's affiliate transactions rules.[23] While IBM did not provide specific support for its argument, the Bureau's own review of the manual reveals significant ambiguities and omissions which must be corrected by amendment.

16. Ameritech's manual states that the contracts and agreements reflected in its descriptions of transactions comply with Section 32.27 of the Commission's Rules.[24] However, it is not clear from reading Ameritech's descriptions of the transactions that the rules are being followed. In fact, it is difficult in most cases to determine whether Ameritech is describing a transaction involving assets or one involving services. A few examples will illustrate the problem. The first transaction listed is labelled "General," and involves the provision of telephone service to nonregulated affiliates.[25] From the text of the explanation given, we know that the transaction involves a service, and that the service is provided at tariff rates, a price at which the service is generally available to the public. We can also infer, from the nature of the service, that its frequency is ongoing. In sum, we have all the information we need to know to satisfy ourselves that this transaction fully complies with our affiliate transactions rules.[26]

17. The second set of affiliate transactions involves those that the carriers provide to their wholly-owned "ComSubs."[27] The descriptions state that the Ameritech provides a host of corporate support functions to the Comsubs, and we can infer that the frequency of these transactions is ongoing. Although most of these transactions probably involve the provision of services, it is impossible to discover, without additional information, whether occasional (or even frequent) asset transfers occur. ComSubs also provide services to Ameritech. Although we know that the ComSubs bill the operating companies monthly for their services, the manual must establish that a generally-prevailing price exists as to any of these services. If no prevailing price exists, the costs of providing those services would be determined by allocating the costs pursuant to Section 64.901 of the Commission's rules. Ameritech must amend its manual to resolve this ambiguity.

18. The same problems exist as to the other transactions listed, whether they are transactions provided by the operating companies to the affiliate, or by the affiliates to the operating companies. Without the information necessary to determine which of the Commission's rules applies, it is impossible for us to verify that Ameritech has correctly represented that the transactions do comply with the affiliate transaction requirements. The absence of such information will also impede the auditability of the manual, since auditors would be left with the initial problem of determining what type of transaction is occurring and which valuation standard to apply. Our initial review of the manual is the proper place to discover how Ameritech intends to comply with the Commission's rules. Ameritech must review the affiliate transactions section of its manual thoroughly, and make such amendments as necessary to provide us with sufficient information to make a determination that it understands, and will comply with, the Commission's rules.

19. *Employee training.* Ameritech's cost manual makes no provision for compensating the regulated entity for the value of employee training and development when an employee is temporarily or permanently transferred to an affiliate. Ohio argues that Ameritech improperly fails to allocate these costs. Ohio argues that the practice of loaning employees to an affiliate represents both an opportunity and an incentive for the operating companies to cross-subsidize nonregulated activities. Ohio recommends that a percentage mark-up be placed on the loaned employee's wages to compensate the regulated entity for the employee's training and development. For employees that are permanently reassigned to the nonregulated activity, Ohio recommends that the regulated entity receive a recruitment fee.[28] In response, Ameritech argues that intangibles such as the value of employee training are outside the scope of the *Joint Cost* proceeding and cannot be allocated.[29]

20. This question was resolved in the *Reconsideration Order*. The Commission stated that it would not require the allocation of costs of employee training and development, unless it became apparent that the regulated entity was providing employee training as a service to its affiliates.[30] In order to monitor carrier practices in this area, we intend to issue data requests from time to time concerning employee training and transfer practices. Based on the information we receive, we may order audits of those carriers that appear to be training and then transferring employees on a routine basis. For the interim, Ohio has raised no new arguments here not already that have been considered and rejected by the Commission. We therefore will not adopt Ohio's suggestion.

C. Incidental Activities

21. In the *Joint Cost Order*, the Commission recognized that carriers engage in a number of miscellaneous activities that are not considered to be regulated, but that have traditionally been recorded in regulated books of account as a matter of convenience. These incidental activities are outgrowths of the carrier's regulated operations and are

typically quite small in terms of the costs and revenues that they generate. The *Joint Cost Order* permitted carriers to continue to account for incidental activities as regulated, but required carriers to include a list of these activities in their manuals. Carriers were also required to provide a justification for treating these activities as incidental.[31] To qualify for incidental treatment, the activity must be an outgrowth of regulated operations, cannot constitute a separate line of business, and must have been traditionally treated as regulated for accounting purposes by the carrier claiming incidental treatment. The sum total of all incidental activities shall not exceed one percent of a carrier's total revenues.

22. Only one party commented on Ameritech's list of incidental activities. MCI argued that Ameritech failed to provide justification for its treatment of the listed activities as incidental.[32] Ameritech responded that its manual states that each activity listed fully complies with the requirements of the *Joint Cost Order*, and that its cover letter accompanying the filing of the manual stated that the total incidental revenues amounted to less than one percent of operating company revenues. According to Ameritech, these representations will be confirmed when the independent audit is conducted next year.[33]

23. Although Ameritech states that all of the activities listed fall within the Commission's requirements for incidental activities, Ameritech has not provided the justification required by the Commission explaining how each activity meets all the criteria. Ameritech must amend its manual accordingly. Moreover, some of the incidental activities listed may be activities which are provided to affiliates and should therefore properly fall under the scope of our affiliate transactions rules. More information about these activities is needed for us to determine if they have been properly designated as incidental.[34]

24. In addition to our general concerns, we have specific questions about several incidental activities. Ameritech must explain in detail the nature of alarm service monitoring for the independent telephone companies. Ameritech must also provide information as to the scope of "Selected Custom Work." Finally, information must be provided about the scope of the maintenance provided by the operating companies for the software they sell to others. This additional information must be included in amendments to the manual.

D. Time Reporting

25. The mechanisms carriers use to record employee work time determine the allocation of a number of carrier costs. Ameritech has used wages and salaries in a variety of contexts to allocate costs between regulated and nonregulated activities. In the *Joint Cost Order*, the Commission decided that it would not mandate a specific form of time reporting. Instead, companies are free to employ positive time reporting or exception time reporting, or to develop studies in order to keep track of employee time. The Commission found that each of these methods would contribute to accurate cost allocations, and that one method could not readily be applied to all situations. The *Joint Cost Order* also required that carriers include in their manuals a description of the methods used to teach, monitor and enforce accurate time reporting. In addition, carriers were required to describe methods used to capture the costs of nonproductive time and the methods used to allocate time.[35]

26. Ameritech has elected to use all three time reporting mechanisms to apportion wages and salaries of employees.[36] Positive time reporting is used by employees engaged in plant specific and plant nonspecific operations who segment their work days into distinct tasks. Exception time reporting is used for a variety of plant nonspecific, customer operations and corporate operations employees who occasionally perform duties outside of their normal responsibilities. Finally, surveys are used to determine the apportionment in two customer operations functions.[37] The manual also describes how the surveys will be conducted.

27. Two parties have objected to Ameritech's procedures for employee time reporting. Ohio recommends that the manual include actual instructions that Ameritech will provide to its employees regarding time reporting. Ohio also states that any surveys to be used for determining employee time should be filed with the manual.[38] MCI asserts that job function codes and field reporting codes should be included in the manual because they are an integral part of the cost allocation process. MCI also states that Ameritech should provide the proportion of employees that will utilize the various time reporting methodologies.[39]

28. Ameritech argues in response that the information these parties seek to have included in the manual is not required under the terms of the *Joint Cost Order*.[40] Ameritech also disagrees that job function codes and field reporting codes should be included in the cost allocation manual.[41]

29. We conclude that, with certain specific exceptions, Ameritech's manual satisfies the Commission's requirements for employee time reporting. We reject Ohio's suggestions to include in the manual directions given to employees for time reporting and a copy of the surveys used in lieu of other time reporting methods. Such a requirement would either breed frequent amendments to the manuals, creating administrative burdens for both the Commission and the carrier, or would discourage Ameritech from refining its procedures. For the purposes of the manual, we find that the descriptions of the teaching, monitoring, and enforcement obligations are sufficient. However, if surveys are used to allocate costs, a brief description of survey methodology is required in order for us to determine initially if the proposed survey technique is adequate. This issue will be addressed in more detail in the account analysis section of the order, below.

30. MCI's suggestion that we require Ameritech to provide complete listing of job function and field reporting codes in the manual will not be adopted. In the *Reconsideration Order*, the Commission specifically stated that the inclusion of such codes in the manuals is not necessary.[42] However, whenever these codes are used to allocate costs, it is important that Ameritech provide additional information concerning how these codes are used to identify a cost pool or to allocate an account. We have discussed this issue in more detail in the account analysis section, below.

31. Ameritech's employee time reporting information also contains some ambiguities that must be clarified. Ameritech's manual provides a chart that purports to show the time reporting method to be used by each group of carrier employees.[43] As an initial matter, Ameritech must clarify that the work groups it has identified include the support staff and managers associated with the work functions identified on its chart. Second, several of the

work groups are linked with more than one time reporting method. In cases where more than one method is used for employees associated with a particular function, Ameritech must describe the criteria it uses to differentiate between methods. We direct Ameritech to amend its manual accordingly.

32. Ameritech has also identified two work groups that will in part be subject to surveys to determine the amount of time spent on regulated and nonregulated activities. In order to decide whether the surveys will accurately reflect time spent on nonregulated activities, we must have more information about the surveys than Ameritech has provided. We need to know more information about the criteria for selecting a study period, whether the survey will employ sampling techniques, and if those sampling techniques will be consistent with accepted statistical methods. Ameritech is directed to provide the required information.

E. Waiver Request

33. Ameritech has submitted a Motion for Waiver, requesting that Packet Assemblers/Dissemblers (PADs) associated with protocol conversion be allocated based on forecasted peak relative nonregulated use over a two-year period. The *Joint Cost Order* required that jointly-used network plant be allocated based on a forecast of the peak relative nonregulated usage of the plant over its entire depreciable life. The Commission reasoned that, because plant is installed in anticipation of future use, a forecast methodology would best match costs to their causes.[44] On reconsideration, the Commission reduced the length of the forecast period to three years in recognition of the practical difficulties of forecasting relative usage over a lengthy period.[45]

34. Ameritech, which submitted its Motion prior to the release of the *Reconsideration Order*, argues that PAD investment decisions are typically made for two-year periods, and that a two-year forecast would better reflect the actual use of the investment. A two-year period would also best allocate costs to the cost causers, Ameritech argues, in keeping with the Commission's objectives. According to Ameritech, a two-year period allows it to "optimize the time, cost, size and location of future investments without concern about regulatory penalty."

35. Ameritech's waiver request is supported by BellSouth and PacTel, who argue that the modular nature of the telephone network warrants a forecast period shorter than the Commission authorized in its *Joint Cost Order*.[46]

36. IBM and Ohio oppose the waiver request.[47] Ohio asserts that the provisions for forecasting the use of network plant go to the heart of the cost allocation process and should not be avoided by waiver.[48] IBM argues that the reasons provided by Ameritech for adopting a two-year forecast period are insubstantial in comparison to the Commission's reasons for adopting a lengthier forecast period.[49] In response, Ameritech states that its waiver request is very limited, that PAD investment differs from central office investment, and that shorter forecast periods promote accuracy.[50]

37. In the *Reconsideration Order*, the Commission reduced the length of the forecast period for shared network investment from depreciable life to three years. The Commission also established that carriers seeking to forecast shared network plant for a period shorter than three years would have to make a specific, detailed showing to justify a shorter forecast period. Carriers seeking to use forecast periods shorter than three years are required to demonstrate that (a) the relevant engineering planning period is less than three years; (b) the planning and deployment process is not merely an activation of capacity already in place but not yet in service; (c) demonstrate that the use of a shorter forecast period will result in substantially more accurate forecasts and therefore more accurate cost allocations; and (d) the costs of implementing the shorter periods do not outweigh the benefits.[51]

38. The Commission's decision to reduce the forecast period for common network plant from depreciable life to three years substantially alleviates the problems Ameritech claims it will have in making lengthy forecasts. In addition, Ameritech's showing to justify use of a two-year forecast period does not meet the requirements of the *Reconsideration Order*. While Ameritech makes generalized arguments concerning its planning period for PADs, it does not provide any of the demonstrations described in the *Reconsideration Order*. For these reasons, Ameritech's request for waiver of the standard forecast period for shared network plant is denied. Ameritech must amend its manual to reflect this action.

F. Other Issues

39. *Use of the "Bell" name*. Ohio argues that Ameritech should allocate the "cost" of developing the "Bell" name. According to Ohio, at least one state has required a BOC to charge its nonregulated, affiliate operations for the use of the Bell name.[52] Ameritech opposes Ohio's request, arguing that an intangible benefit such as this was never meant to be subject to the *Joint Cost* proceeding.[53]

40. In the *Joint Cost Order*, the Commission found that intangible benefits, and the allocation of those benefits, was beyond the scope of this proceeding.[54] Although the *Joint Cost Order* provides a mechanism for allocating all of a carrier's costs between regulated and nonregulated activities, intangible benefits, such as the Bell name, are not costs. No cost associated with the Bell name has ever appeared on Ameritech's books. The Bell name is therefore an intangible benefit outside the scope of this proceeding.

41. *True-up procedures*. Ameritech's manual provides that it will track relative regulated and nonregulated usage in order to compare actual relative usage with its forecast usage. In the event Ameritech has underforecast peak relative nonregulated usage, Ameritech's manual requires Ameritech to reallocate costs to the nonregulated activity pursuant to the Commission's requirements.[55]

42. MCI argues that the true-up mechanisms described by Ameritech for its forecasted use of network plant do not establish a sufficient penalty in the event nonregulated usage is underforecast. Furthermore, MCI contends that the cost pools proposed by Ameritech in its manual are so broad as to avoid the need for true-ups, since the pools are large enough to permit some averaging of usage. MCI argues that true-ups should be based on equipment types instead of the broad cost pool groupings proposed by Ameritech.[56] Ameritech does not specifically respond to MCI's argument.[57]

43. MCI's arguments misconstrue the requirements of the *Joint Cost Order*. Once a carrier predicts peak relative nonregulated usage of network plant, the carrier is required to track the actual nonregulated usage of the plant to discover if the forecast has correctly predicted actual

usage. If an underestimation of nonregulated usage occurred, the carrier is required to reallocate costs that had originally been designated as "regulated" pursuant to the original forecast, to the nonregulated activity. In order to discourage carriers from underestimating nonregulated usage, and thereby shifting investment risk to regulated entities, the Commission also required that the carrier's nonregulated activities compensate the regulated operation by paying an interest charge equal to the carrier's authorized interstate rate of return on the plant to be reallocated. In the *Joint Cost Order*, the Commission stated that this interest charge would operate to discourage underestimation of nonregulated usage of network plant. However, the Commission did not require that any "penalties" over and above this interest charge be paid by the nonregulated activity.[58] MCI's argument is therefore without basis.

44. In addition, MCI's arguments that Ameritech's cost pools are overly broad contradict the requirements of the *Joint Cost Order*. As we have explained, *supra* at para. 6, the number of cost pools employed by a carrier depends on a number of factors. So long as the investment or expense contained in the cost pool can be fairly allocated based on a single allocator, there is no reason to require a cost pool for each "type" of equipment, as suggested by MCI.

III. ACCOUNT-BY-ACCOUNT ANALYSIS

45. In its manual, Ameritech provides descriptions of the methods it proposes to use to derive cost pools, as well as descriptions of the methods it proposes to use for allocating costs between regulated and nonregulated activities. Ameritech then provides a lengthy table, organized by USOA account, that reveals how its cost pool apportionment and cost allocation methods will be used to isolate nonregulated costs. Various parties have raised issues with respect to the cost pool apportionment and cost allocation bases for individual accounts contained in the table. In addition, we have reviewed the table and identified additional issues to be resolved. Before discussing these specific account issues, however, we will address some general problems that relate to more than one account.

A. Cost Apportionment Issues

46. Generally, Ameritech's descriptions of its cost pool derivations and its cost allocation methodologies provide an adequate summary of its methods.[59] The descriptions explain the mechanisms that Ameritech will employ to divide accounts into cost pools and then to allocate those costs between regulated and nonregulated activities. Although we believe that Ameritech has to a large extent satisfied the Commission's requirements to specify its methodologies, we find that in a number of specific instances, Ameritech has failed to provide the level of detail necessary for us to determine whether its cost pool apportionment or cost allocation bases are sound. We are requiring Ameritech to submit additional information and amendments to correct these deficiencies. in many cases, the amendments we will require Ameritech to make are in the nature of a clarification. In other cases, we simply need additional information in order to make a determination about the apportionment basis. In still other cases, we have reservations about the allocators being proposed, but need additional information before making a decision.[60]

47. First, several bases for apportionment require clarification. These methodologies involve an "analysis" of activity within a USOA account. From the descriptions provided by Ameritech, it appears that in most cases the "analysis" involves a transaction by transaction analysis of the activity in the account, but the manual does not say whether such a detailed level of scrutiny is in fact contemplated. For example, "Account Transaction Analysis" is used to apportion costs into cost pools for several investment accounts.[61] The description of the analysis to be performed states that "the transactions are analyzed and classified into regulated, nonregulated, and shared cost pools." While it is possible to infer that the analysis requires an examination of each and every transaction reflected in the accounts, we need to know if in fact a transaction-by-transaction analysis will be performed in order to make an informed judgment about Ameritech's proposed methodology.[62] Ameritech's manual is also silent with respect to the criteria it will employ to classify the transactions being analized. We must be fully aware of the process Ameritech intends to use apportion costs.

48. These same issues arise with respect to "Analysis of Computer Usage," "Analysis of Leased Assets," "Analysis of Motor Vehicle Records," "Analysis of R&D Projects," "Analysis of Tax Records," the "analysis" of Field Reporting Codes or Job Function Codes used to derive cost pools, "Functional Analysis of Property Records," "Account Transaction Analysis" for the purpose of apportioning costs, "Service Order Analysis," and "Trouble Report Analysis."[63] In each case, Ameritech should amend its description to make clear exactly what it contemplates in using the term "analysis."

49. In addition to clarifying the meaning of some of its terminology, Ameritech also needs to provide some further information, with respect to certain of the allocation basis. Several cost allocations based upon wages and salaries require clarification. "Central Office Wages and Salaries," "Distribution Services Wages and Salaries," "Engineering Wages and Salaries," and "Network Plant Support Wages and Salaries," all state that the allocator will be based on the proportionate relationship of regulated to nonregulated wages and salaries in a series of listed accounts. For each allocator, at least one of the accounts on the list contains an investment account. Since no wages and salaries are recorded in investment accounts, Ameritech should explain its allocator. Presumably, Ameritech is proposing to track wages and expenses that have been cleared from the expense accounts (because they are associated with specific construction projects) to the accounts. If so, Ameritech must explain its methods in full. This same problem also surfaces for "Network Total Expenses," which are used to allocate Account 6724, Information Management. We also find that Ameritech's references to the "relative value" of a related investment account introduces ambiguity into its description of its attribution methods. "Value" can be given several different meanings. When describing how costs will be attributed based on another account, Ameritech must employ a more precise word, such as "cost."

50. The Ameritech explanation of four accounts is unclear and confusing. In Accounts 6723, Human Resources; 6726, Procurement; 6727, Research and Development; and 6728, Other General and Administrative, Ameritech states that the costs included in the account include subaccounts

for "Equal Access and Billed to/from Others." Ameritech must explain what these subaccounts are and why they are included.

51. *Official Communications*. We also have several questions regarding Ameritech's provision of "official communications" to its nonregulated activities and affiliates. Ameritech mentions official communications in two places in its manual. First, its "Corporate Network" allocator describes the allocation of the cost of telephone service between regulated and nonregulated entities. Pursuant to the allocator, the nonregulated entity is charged an amount equal to the cost of providing official communications. The amount is determined by "appropriate cost apportionments."[64] As an initial matter, the treatment of the cost of telephone service to affiliates involves affiliate transactions and should be listed in the manual as such. Second, and more importantly, the proposed "allocation" of cost does not appear to comply with the Commission's affiliate transaction rules. Section 32.27(d) of the Commission's rules states that services provided to an affiliate for which a generally available price exists should be charged at the prevailing price. So long as a tariff rate for telephone service exists, Ameritech must charge its affiliates pursuant to the tariff. Ameritech must therefore amend its manual to reflect the Section 32.27(d) requirement.

52. As a part of its allocation of Account 6728, Other General and Administrative Expense, Ameritech states that it will create a cost pool for official communications. The cost pool would be allocated based on total company wages and salaries less direct construction, installation and repair wages and salaries. The *Joint Cost Order* established a hierarchy of cost allocation principles for carriers to follow in formulating their cost allocation proposals. The first principle, contained in Section 64.901 of the Commission's rules, is that nonregulated activities are to be charged tariffed rates for services that are offered under tariff. [65] Ameritech's provision of official communications to its nonregulated activities does not appear to be in compliance with this requirement. We direct Ameritech to revise its manual to comply with this requirement.[66]

B. Accounts To Be Added

53. In the *Joint Cost Order*, the Commission required that carriers submit cost allocation proprosals for each USOA account and subaccount. [67] This requirement, however, if interpreted literally, would have mandated the allocation of USOA accounts that are unrelated to measures of a carrier's costs and revenues. In the *Automated Reporting Requirements* proceeding, the Commission made public for the first time the list of accounts that would be subject to joint cost reporting.[68] That list was not available until after Ameritech had submitted its manual. As a result, the Ameritech manual does not include a number of accounts that the Commission has determined we must evaluate. Ameritech will therefore be required to amend its manual to include all the accounts named in the *Automated Reporting Requirements* proceeding.

54. In addition to the accounts named in the *Automated Reporting Requirements* order, we have determined that six accounts must be allocated. These accounts were either inadvertently omitted or must be added to the list to procure correct rate base computations. Those accounts are: Account 1439, Deferred Charges; Account 2004, Telecommunications Plant Under Construction - Long Term; Account 4120, Other Accrued Liabilities; Account 4360, Other Deferred Credits; Account 5050, Customer Premises Revenue; and Account 7150, Gains and Losses from Disposition of Land and Art Works[69] Ameritech has not provided apportionment for three of these six accounts.[70] In amendments to be filed with its manual, Ameritech must include information on these accounts, and in particular, the portion of the accounts that are included in, or deducted from, the rate base.

C. Specific Accounts

Account 2112-Motor Vehicles

55. In its "Analysis of Motor Vehicle Records" that is used to determine cost pools for Account 2112, Ameritech should explain in amendments to its manual the distinction between its pool for "Network Support Motor Vehicles" and its cost pools for motor vehicles used in connection with central offices and distribution services.

Account 2114-Special Purpose Vehicles

56. Ameritech proposes to allocate Account 2114 based on its cable and wire facilities investment. In its comments, AT&T objects to Ameritech's approach. AT&T contends that since Ameritech's manual provides that all outside plant facilities will be directly assigned to regulated activities, any nonregulated usage of the special purpose vehicles would be ignored.[71] In its reply comments, Ameritech claims that these vehicles are used exclusively in connection with outside plant facilities that currently are only used to provide regulated services.[72] We believe that Ameritech's allocation basis for Account 2114 is reasonable. So long as Account 2114 contains investment that only supports outside plant, an allocation basis which reflects the use of that outside plant is acceptable for the present. Of course, if and when outside plant is used for nonregulated purposes, the allocation basis ought to change to a more cost-causative basis, such as relative use.

Account 2212-Digital Electronic Switching

57. Ameritech plans to create five separate cost pools for this account. Three cost pools are identified from subaccounts, while the two packet switched pools are identified from a functional analysis of property records. The one packet switched pool that is allocated, the "packet switched network-shared" pool, employs an allocation basis of projected logical channels (*i.e.*, memory). MCI raises many questions with respect to Ameritech's cost allocation for Account 2212. MCI contends that a "functional analysis of property records" is an insufficient basis on which to establish cost pools because it relies on the "engineered, furnished and installed" prices of different components of the network.[73] MCI states that as shared use of the equipment grows, such functional analysis of property records is likely to become increasingly impractical. MCI further states that Ameritech has not effectively demonstrated that logical channels (memory) provide an accurate and comprehensive cost causation factor. MCI claims that Ameritech's manual neither explains nor defends the selection of these particular units of usage to be applied in the allocation process for packet switching costs.

58. In its reply comments, Ameritech defends its use of logical channels (memory) as a projected unit of measurement that most accurately reflects actual equipment utilization.[74] Ameritech states that other measures of utilization of the digital electronic switch for packet

switching, such as the number of physical connections or lines, or the "throughput" (the number of packets per second), will not provide accurate data by which to measure relative usage. Ameritech states that since each call requires a logical channel, a direct relationship exists between the number of logical channels and the amount of memory used.

59. We reject MCI's complaint against Ameritech's proposed methods of apportioning costs into cost pools for Account 2212. While property records may at some future date prove impractical, we will not overrule Ameritech's proposed apportionment basis unless and until it becomes apparent from the annual independent audits that Ameritech is having difficulty following its manual, or that the method is unduly burdensome. Further, we have no basis, until actual results are available, to find that logical channels is a poor allocator. Should Ameritech's results for this cost pool be disproportionate to similarly-situated carriers, we will examine the allocator again. For the present, we will permit Ameritech's proposals to take effect.

Account 2231-Radio Systems

60. AT&T states that Ameritech's manual fails to provide for the proper allocation of the costs of microwave towers used with its Skywave Instructional Television Fixed Service (Skywave ITFS), which is a nonregulated service. AT&T claims that the Ameritech manual contains no express provisions for the assignment of the costs of microwave towers that support these radio facilities. AT&T contends that if these costs are included in Account 2411, Poles, the nonregulated use of the towers would be ignored and if included in Account 2121, Buildings, the allocation would not accurately reflect the relative nonregulated use of the towers, contrary to the requirements of the *Joint Cost Order*. AT&T states that Ameritech's manual should be amended to provide for separate cost pools for microwave towers to be directly assigned, or to be allocated based on the use of the microwave radio facilities supported by the towers.[75] Ameritech states that all tower facilities used to provide Skywave ITFS are provided by the customer at no cost to Ameritech.[76] Ameritech claims that the only nonregulated expense of this kind utilized by Skywave ITFS is for the rental of shared floor space and antenna attachments. According to Ameritech, these costs are charged to Account 6121 and allocated based on the relative value of land and buildings owned, and capitalized lease investments. We find Ameritech's allocation procedures for its Skywave ITFS appropriate for the present. Of course, if Ameritech-owned supporting structures are used in the future, the Ameritech manual would have to be revised.

Account 2311-Station Apparatus

61. Ameritech directly assigns the costs of this account to its regulated operations. However, the accounting treatment of station apparatus is extremely complex due to the Commission's various decisions in its *Computer II Implementation* proceeding,[77] the *BOC CPE Relief Order*, [78] and the various options open to carriers in the provision of station apparatus as a result of these decisions. Ameritech is therefore required to explain in the comment section to the table what it will be including in this account for station apparatus.

Account 2341-Large Private Branch Exchanges

62. Ameritech has directly assigned all investment in this account to regulated activities. We infer from this assignment that there is no nonregulated use of this account. Ameritech must confirm our understanding by amending the comments section of the table to state affirmatively that no nonregulated use exists.

Account 2681-Capital Leases

63. Ameritech's definition of "Analysis of Leased Assets," which is used to apportion cost pools for Account 2681, must be amended to include a more precise statement concerning the apportionment of costs into the "Other" cost pool.[79] The present description does not clearly state if Ameritech proposes to use the "Other" pool as a residual pool for costs not directly assignable. In addition, the cost allocation basis for the "Other" cost pool must also be clarified.

Accounts 2690-Intangibles, Account 3500-Accumulated Amortization-Intangibles, and Account 6564-Amortization Expense-Intangibles

64. AT&T states that Ameritech's manual appears to be internally inconsistent with respect to these accounts.[80] Ameritech proposes to allocate Account 2690 based on an analysis of the account and the relative value of the assets. AT&T notes that Ameritech proposes to assign Accounts 3500 and 6564 using the general allocator. AT&T claims that a more cost-causative approach would be to assign these accounts for intangible costs based on the assignment of intangible assets in Account 2690. Ameritech has revised its manual so that treatment of Account 3500 and Account 6564 is consistent with Account 2690.[81] We concur with this change.

Account 3100-Accumulated Depreciation

65. In the *Joint Cost Order*, the Commission provided that cost allocation records for accumulated depreciation must be maintained at the USOA account level.[82] Ameritech has organized cost pools for groupings of USOA accounts. However, it is not clear if the allocation of the depreciation reserve will be maintained at a greater level of specificity, as required by the Commission. Ameritech is therefore directed to disaggregate this account pursuant to the Commission's requirements, or to explain how its proposal satisfies those requirements.

Account 4120-Other Accrued Liabilities

66. Ameritech has not provided for the apportionment of this account. We have previously directed Ameritech to make such a provision. In apportioning this account, a separate cost pool must be established for the accrued liabilities associated with compensated absences. We direct Ameritech to amend its manual accordingly.

Accounts 5301 - Uncollectible Revenues - Telecommunications and Account 5302-Uncollectible Revenue-Other

67. Ohio states that Ameritech's proposed allocation of the end user uncollectible cost pools on the basis of "the relative proportion of revenues" is unsatisfactory. Ohio claims that the Commission has rejected revenues as a basis for calculating an allocation.[83] Ameritech states that to allocate end-user uncollectibles on the basis of any method other that the "relative portion of revenue" would be impractical, inefficient and not cost causative.[84] Ameritech contends that contrary to Ohio's claim, the

Commission has not rejected revenue as an allocator under all circumstances but only as a factor in the computation of the "general allocator". Ameritech states that in a joint billing arrangement, uncollectibles are a result of nonpayment for the total obligation for regulated services and nonregulated activities. Ameritech claims that in these cases an allocation of uncollectibles on the relative proportion of regulated and nonregulated revenues is a proper reflection of cost causation. Ameritech states that it will directly assign the uncollectibles to either regulated services or nonregulated activities whenever where revenues are separately billed or identifiable.

68. We are uncertain, without knowing more about a carrier's internal accounting practices, the relationship that the amount of uncollectibles appearing on the carrier's books has to its mix of activities. We therefore will not require Ameritech to amend its cost allocation basis, but we will require some clarification. Ameritech appears to respond to Ohio's criticisms by stating that it will directly assign end user uncollectibles where possible. Ameritech must explain how this is possible, and must also amend its manual to this effect.[85] Furthermore, we believe revenues is too broad an allocator for these accounts and requires refinement. Account 5301 reflects uncollectibles from telecommunications activities, while Account 5302 reflects uncollectibles from all other activities. We believe these accounts should be allocated based on corresponding revenue accounts. Thus, telecommunications revenue must form the basis for an allocation of telecommunications uncollectibles. Ameritech must therefore amend its manual.

Account 6121-Land and Building Expense

69. Ameritech has divided this account into three cost pools, one of which is named "Operating Rents." Ameritech proposes to allocate the expenses included in this pool based on the "predominant use" of the rented asset. AT&T claims that under this methodology, any use of the land and building that is not a predominant use would be ignored.[86] AT&T states that in operation Ameritech's manual would assign all rental expense to regulated operations, even though nonregulated activities make substantial use of rented space. AT&T proposes that Ameritech assign the rental expense on the same basis that the rented plant would be allocated if owned, based on the plant's relative regulated and nonregulated usage. In response to AT&T's criticisms, Ameritech submitted a revised allocation methodology for Account 6121. Under the new proposal, Ameritech will use just two cost pools, one "Regulated" and one "Other." The "Other" pool will be allocated based on the relative value of land and buildings owned, and capitalized lease investments.[87]

70. We do not agree with Ameritech's revised methodology for this account. Basing an allocation on the relative value of land and buildings that are owned may have the effect of skewing the cost apportionment results to regulated activities if use of land and buildings that are owned is different from the use of land and buildings that are rented.[88] Furthermore, we believe there should be a separate cost pool established for Account 6121 for operating rent expense, which may constitute a significant portion of the expense associated with nonregulated activities. This cost pool can then be directly assigned to regulated or nonregulated based on the relative use of the rented asset. This methodology is similar to the methodology Ameritech originally described in its manual for Account 6121. The difference is that rather than assigning the operating rents based on the predominant use of the rented asset, the operating rents cost pool would be assigned to regulated or nonregulated activities based on the relative use of the rented asset. Requiring a separate cost pool should pose no burden for Ameritech since it is one of the subsidiary record categories required to be kept as part of the expense matrix under Part 32 of the Commission's rules.

Account 6212-Digital Switch Expense

71. In Account 6212, Ameritech derives a cost pool for the repair and rearrangement of shared packet switched investment by isolating the value of shared packet switched investment relative to total packet switched investment. The percentage of shared investment to total investment is applied to the total amount of cost in Account 6212 to determine the cost pool for expenses associated with shared investment. Ameritech then allocates the shared cost pool between regulated and nonregulated activities on the basis of actual usage of the related investment for packet switching.

72. MCI argues that relative investment value is not a cost causative method of determining cost pools in this particular expense category.[89] MCI states that Account 6212 includes the costs of a wide range of activities which are likely to be caused by the particular needs of particular services. For example, MCI contends that the cost of maintenance, which represents a substantial portion of the account, may be increased for an entire machine due to the provision of certain services. Further, MCI claims that Ameritech overstates its case when it claims this shared cost pool is "directly attributable" to regulated and nonregulated activities based on measurements of relative use.

73. Ameritech disputes MCI's statement that some maintenance expense activities are likely to be caused by a particular service.[90] Ameritech states that, at least for the present, this is not the situation for the very small amount of existing shared network investment. Ameritech also claims that if key maintenance expenses can be directly assigned, its manual will be modified, but until then it asserts that the use of relative plant investment is appropriate. However, in response to MCI's criticism of its cost definition, Ameritech has revised its manual to change the cost definition for the packet switched network repairs and rearrangements shared cost pool from "directly attributable" to "indirectly attributable."

74. We will not require Ameritech to amend its cost pool apportionment basis for the repairs and rearrangements shared pool. MCI, while criticizing Ameritech's methods, has not identified another method that would produce more accurate results. In addition, we concur with Ameritech's amendment to its cost definition column.

Account 6362-Other Terminal Equipment Expense

75. Ameritech must explain why this account requires a cost pool for "equal access." The account is used to reflect the costs of other terminal equipment expense, which presumably does not involve the provision of equal access.

Account 6531-Power Expense

76. Ameritech must explain how, through special purpose function codes, it will be able to identify the equal access cost pool in this account.

Account 6561 - Depreciation Expense - Telecommunications Plant in Service

77. Ameritech has established serveral cost pools for this account that parallel the cost pools it established in Account 3100 for depreciation reserve cost pools to reflect USOA accounts or to explain how its proposed method accomplished that objective. In order to make Ameritech's treatment of depreciation expenses consistent, we direct Ameritech to make the identical amendments or showing for this account.

Account 6611-Product Management, Account 6612-Sales, and Account 6613-Product Advertising

78. Ameritech has created several cost pools for these accounts. Some of the pools employ the marketing allocator. We believe the marketing allocator, like the general allocator, is only meaningful if it is based on a majority of a carrier's marketing expenses.[91] We therefore require Ameritech to justify its use of the marketing allocator for these pools and to explain if a more cost causative method, such as time reporting, can be substituted.

Accounts 6612-Sales and Account 6623-Customer Service

79. In its discussion of its "Service Center Activity Study," Ameritech has provided information on the general parameters of the study it will undertake to allocate the costs of these accounts.[92] MCI argues that the description of service center study suggests that the procedures used to record the amount of time spent on nonregulated activities could easily be underestimated since the study is intended to evaluate the percentage of time, "on average," that time is spent on nonregulated activities.[93] Ameritech does not specifically respond to MCI's complaint.

80. Studies of work activity, if performed properly, provide a superior basis upon which to allocate costs. The time and motion methodology that Ameritech states it will use appears to be an attempt to provide an accurate measure of the amount of time Ameritech's service center employees will spend on regulated and nonregulated activities. However, in order to make an informed judgment about the study, we need to know two additional details. First, we must understand what type of sampling Ameritech intends to use and whether the scope of sampling efforts will permit a sufficiently high level of confidence that the results obtained are accurate. Second, although Ameritech reveals that the study will be conducted during the "busy season," we need to know why a busy season would provide more accurate results for a study of labor, and if more accurate results can be justified, what the busy season will constitute.

Account 6623-Customer Service

81. The cost apportionment bases for Account 6623 also needs to be explained further. Ameritech is proposing to allocate the costs of Customer Billing and Collection pursuant to a study that will establish the proportion of regulated and nonregulated messages, as well as the "lines of billing ratio." MCI argues that Ameritech proposes to do a comparison of the average number of billing lines required for regulated activities to those used for nonregulated activities.[94] MCI claims that this is an unreasonably simplistic approach to costing. It says that there is no reason to assume that the complexity of the billing is the same for each line of the bill or that the carrier could not manipulate its billing format as a means of implementing a cross-subsidy. Ameritech responds that, as a practical matter, the combined billing of the few nonregulated activities contemplated in its manual creates little, if any, extra cost. Ameritech claims that, since there are few costs, no allocator is "cost causative," and that its simple relative use allocator based on billing lines is reasonable.

82. Our examination of Ameritech's treatment of Account 6623 has left considerable doubt as to how Ameritech proposes to use its "Billing and Collection Study" and "lines of billing ratio" to allocate the costs in the account. The manual does not explain how the study, which focuses on messages, interacts with the billing ratio in order to produce an allocator. Ameritech must also explain how the study and the "lines of billing ratio" is to be used to allocate costs for this account. Furthermore, Ameritech must provide a brief description as to the parameters of the study and how it proposes to distinguish between regulated and nonregulated messages.

83. There are two other issues Ameritech needs to resolve with regard to Account 6623. First, Ameritech must explain why it has a marketing pool in this account. Second, Ameritech must provide additional detail in its comments in the "Customer Service: Regulated" cost pool. Because the entire pool is assigned to regulated, Ameritech should justify why it considers its Street Address Guide Bureau to be a regulated function.

Account 6711-Executive

84. Ameritech uses the general allocator to apportion this account. We believe Ameritech must attempt to assign or attribute these costs either directly or indirectly before employing the general allocator. In the *Joint Cost Order*, the Commission created a hierarchy of allocation mechanisms that employs the general allocator only if costs cannot be assigned or attributed on some cost causative basis. We believe that a substantial portion of this account can be assigned or attributed.

Account 6724-Information Management

85. For the "Network" cost pool, Ameritech must explain what network expenses are included in Accounts 22XX, 23XX and 24XX. Also, Ameritech must specify if the "Network" cost pool is for shared costs. If no shared costs are included, it must distinguish between the "Network" pool and the regulated and nonregulated cost pools.

Account 6725-Legal

86. Ameritech proposes to assign costs directly to regulated and nonregulated activities where possible, and employ the general allocator for other costs. While agree that Ameritech must employ direct assignment to allocate the costs of this account, Ameritech must not rely on function codes to directly assign costs. Instead Ameritech should use time and expense reporting. If there are overhead costs *(e.g.,* a law library), these costs must be apportioned based on the relative regulated and nonregulated split Ameritech obtained through its direct assignment.

Ameritech may employ a "shared" pool using the general allocator, provided that this pool contains no overhead expenses.

Account 6726-Procurement

87. Ameritech has proposed four cost pools for this account. Two of the cost pools, "regulated" and "nonregulated" are directly assigned. A third pool, "plant" is indirectly attributed to regulated and nonregulated based on the relative valve of network plant investment. The final pool, "corporate and other" is allocated based on wages and salaries of a portion of Ameritech's employees. We have two questions about Amertech's treatment of its procurement expenses. First, Ameritech must explain the distinction it is making between it "regulated" and "nonregulated" pools and its other two pools. The cost pool apportionment bases do not make clear whether the "plant" and "corporate and other" pools represent residual costs, *i.e.*, those costs that are not "regulated" or "nonregulated." Second, we require Ameritech to explain why it is not proposing to use time reporting of employees engaged in procurement functions, particularly with regard to its "plant" and "corporate and other" cost pools. We are doubtful that the allocators proposed by Ameritech for these pools will produce accurate results. Ameritech must therefore justify is use of the allocators it is proposing.

Account 6728-Other General and Administrative

88. Ameritech must explain the comment associated with the "nonregulated " pool which purports to explain its cost pool apportionment basis. We do not perceive how the comment concerning official communications relates to the formulation of the cost pool.

Account 6790-Provision for Uncollectible Notes Receivable

89. Ameritech needs to specify if its allocation of this account, which relies on our "Account Transaction Analysis," is actually based on an analysis of Account 1200, Notes receivable, and if not, on what basis the account is allocated.

Account 7220-Operating Federal Income Taxes, Account 7230-Operating State and Local Income Taxes, and Account 7250-Deferred Operating Income Taxes

90. For the current income tax accounts, Ameritech proposes to use "pre-tax book income" to allocate income taxes between regulated and nonregulated activities. For deferred income taxes, Ameritech proposes to use a variety of apportionment techniques. Deferred taxes related to property, debt refinancing costs and "lien date property taxes" are allocated based on related investment accounts. Vacation accrual is allocated based on total wages and salaries. An equal access pool is directly assigned to regulated, while a residual pool is allocated based on an "account transaction analysis."

91. Applying different apportionment bases to any one or group of these accounts could result in assignments of these costs that are not consistent with the related book income. The net book taxes resulting from these accounts should reflect normalized taxes, since under the revised USOA, interperiod tax allocations are used for accounting purposes. Moreover, Ameritech's proposal to use "pre-tax" book income for the current income tax accounts does not define "pre-tax book income." If all three of these accounts are allocated based on a specifically-defined book income, the taxes apportioned should result in appropriate distribution between regulated and nonregulated activities. We believe that book income should be operating book income before taxes and minus interest expense. Our proposed methodology ensures that the costs are being allocated correctly and in a straightforward manner, and better reflects the cost being allocated -- income taxes. We direct Ameritech to amend its manual accordingly.

Account 7370-Special Charges

92. The *Automated Reporting Requirements* proceeding required the allocation of this account. Ameritech has established apportionment procedures for the portion of the account reflecting charitable contributions. In revising its manual, Ameritech must submit a proposal encompassing the entire account. In doing so, we direct Ameritech to retain the cost pool for contributions separate from any other pools it elects to create.

IV. PROCEDURAL ISSUES

93. In this section we address a number of procedural issues affecting the manuals. These issues are: (a) the submission of revised manuals in compliance with this order; (b) interim reporting and retention requirements; and (c) the routine submission of future amendments to the manuals.

94. *Revised manuals*. We have required Ameritech to submit extensive amendments clarifying and changing many of its cost pool apportionment and cost allocation procedures. We have also directed Ameritech to submit additional information concerning its affiliate transactions, incidental activities, and time reporting mechanisms. In many cases, the additional information requested is needed to form a judgment concerning the reasonableness of Ameritech's proposed methods. In the *Joint Cost Order*, the Commission specifically provided for public comment on the manuals so that determination on their compliance with Commission requirements would be based on a full record.[95] Similarly, we believe that our review of Ameritech's amendments will be aided by public comment on the revision. Public comment on the revisions fulfills the *Joint Cost Order's* promise that the cost allocation methodologies would be exposed to public scrutiny prior to their implementation.

95. We will evaluate the proposed revisions, as well as the comments that we receive, before issuing an order approving or disapproving the amendments. If we disapprove a proposed revision, we shall take whatever further action is required, including mandating specific allocation methodologies or other procedures, consistent with our delegated authority to implement the manuals. All revisions that are approved or ordered shall be made retroactive to January 1, 1988. In addition, to facilitate our handling of manuals and the availability of updated manuals to the public, Ameritech must file two updated copies of its revised manual with the Commission in looseleaf form with numbered and dated pages, within 60 days of the release date of this Order.[96] When amendments are submitted, each revised page must clearly indicate the word "REVISED" and the date next to the page number. All amended language must be indicated by a verticle line in the right margin of the page.

96. *Interim reporting and record retention.* The *Joint Cost Order* directed us to develop interim reporting and record retention requirements, pending the final resolution of these issues in the *Automated Reporting Requirements* docket.[97] In that proceeding, the Commission delegated to us the authority to determine the parameters of the data to be filed concerning the separation of joint and common costs.[98] The Commission also specified that the first report containing the results of the implementation of the cost manuals would be filed on June 1, 1988, covering the period of January 1, 1988 to March 31, 1988. The Commission directed us to finalize our reporting standards prior to that date. Given that reporting will begin five months after the implementation of this manual, we decline to issue interim reporting formats. We believe our resources are better devoted to assuring that the permanent reporting requirements, scheduled to become effective on June 1, 1988, are properly designed and implemented. Moreover, although we will have to wait five months to see the first set of results from the companies, any misallocations that may be detected can be corrected at that time.

97. We require that carriers on an interim basis retain all of their accounting records together with any calculations necessary to perform cost allocations, that will be necessary to report cost allocations to the Commission. For the interim, records must be maintained at a cost pool level.

98. *Routine amendments.* In addition to reporting and recordkeeping requirements, the larger issue of the procedures the companies shall be required to follow when updating their cost allocation manuals must be addressed. In determining how frequently updates to cost manuals should be submitted, we recognize that the accuracy of different sections of the manual will have different effects on our ability to monitor the cost allocation process. For example, it is very important for the Commission to obtain current information on the cost categories and how these are allocated between regulated and nonregulated activities. Other information, such as corporate structure, may not be quite as critical for cost allocation monitoring purposes. Furthermore, some of the information required is intended for our informational purposes so that we understand the carriers' activities, while other information in the manuals must be reviewed prior to implementation.

99. Based on an analysis of these factors, we have decided to adopt the following requirements for the update of manuals.[99] First, several categories of information require our attention before revisions are implemented. These are: (1) changes to the cost categories and their allocation mechanisms; and (2) a change in the way employee time, including nonproductive time, is allocated. Each of these changes in the cost manuals must be submitted at least 60 days prior to implementation. Parties seeking to comment on the proposed amendments will be provided an opportunity to do so prior to implementation and will be notified by public notice of the comment dates. The proposed amendments to the manual will be deemed accepted unless the Common Carrier Bureau, pursuant to its delegated authority, stays the effectiveness of the change or rejects the change.[100]

100. Second, we will require that Ameritech file any changes to its corporate structure in a timely manner.[101] A modification to a carrier's cost manual to reflect a corporate reorganization does not require our advance approval and therefore, does not need to be filed prior to the corporate restructuring. Finally, all other changes to the manual should be submitted quarterly, on March 31, June 30, September 30 and December 31 of each year.

101. We believe that these procedures will ensure that the ongoing process of implementing cost allocations will continue to be conducted according to the requirements set forth in the *Joint Cost Order*. At the same time, it also minimizes the number of times Ameritech must seek prior Commission approval before implementing a change and provides a system which requires Commission action within a relatively short time frame.

V. ORDERING CLAUSES

102. Accordingly, IT IS ORDERED that the Motion for Waiver filed by Ameritech to allocate the cost of Packet Assemblers/Disassemblers based on a two-year forecast period IS DENIED.

103. IT IS FURTHER ORDERED that Cost Allocation Manual, File Number AAD 7-1668, IS APPROVED, subject to the conditions set forth in this Order.

104. IT IS FURTHER ORDERED that revised copies of the Cost Allocation Manual shall be submitted within 60 days from the release date of this Order.

105. IT IS FURTHER ORDERED that this Order shall be effective on January 1, 1988.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] The Ameritech Operating Companies are: Illinois Bell Telephone Company, Indiana Bell Telephone Company, Inc., Michigan Bell Telephone Company, The Ohio Bell Telephone Company, and Wisconsin Bell, Inc.

[2] Separation of costs of regulated telephone service from costs of nonregulated activities, *Report and Order*, CC Docket 86-111, 2 FCC Rcd 1298 (1987)(*Joint Cost Order*), *modified on recon.*, 2 FCC Rcd 6283 (1980)(Reconsideration Order), *petitions for further recon. pending.*

[2] 51 Fed. Reg. 43498 (Dec. 2, 1986), *to be codified at* 47 C.F.R. Part 32.

[3] The commenting parties are: American Telephone and Telegraph Company (AT&T); BellSouth Corporation, South Central Bell Telephone Company and Southern Bell Telephone and Telegraph Company (BellSouth); International Business Machines Corporation (IBM); MCI TelecommunicationsCorporation (MCI) ; the Office of Consumers' Counsel, State of Ohio (Ohio); and Pacific Bell and Nevada Bell (PacTel).

[4] Pursuant to the *Joint Cost Order*, the Commission originally contemplated approving the BOCs' permanent, or "Part 32" manuals by Bureau order only if the permanent manuals differed materially from the interim, or "Part 31" manuals that the BOCs were invited to file. *Joint Cost Order* at 1328. Since Bureau action on the BOCs' Part 31 manuals remains pending, we will issue orders on each of the BOCs' Part 32 manuals.

[5] *Joint Cost Order* at 1328. The *Joint Cost Order* uses the term "cost categories" to describe groupings of costs that are homogeneous in nature for cost allocation purposes. The accounting profession's term for "cost categories" is "cost pools." We will use the two terms interchangeably in this Order.

[6] *Id.* at 1321-22.

[7] *Id.* at 1319.

[8] "Peak relative nonregulated use" is a shorthand reference to an allocation methodology used to allocate the cost of jointly-used central office equipment and outside plant. Under the Commissions rules, jointly-used network plant is allocated by forecast usage of the plant over a three-year period, and finding the point in that three-year period during which nonregulated usage is greatest in comparison to regulated usage. The relative regulated and nonregulated usage at that time is used to allocate the current cost of the network plant. *See* Section 64.901(b)(4) of the Commissions Rules, *Joint Cost Order* at 1343, *amended by Reconsideration Order* at 6308.

[9] MCI Comments at 5-11.

[10] Ameritech Reply at 10-14.

[11] If the additional material we are requesting does not permit us to determine whether the cost pool apportionment or cost allocation methods meet Commission requirements, we will order Ameritech to adopt a methodology of our own choosing, pursuant to our delegated authority to implement the manuals.

[12] We disagree with MCI's arguments that Ameritech should provide an estimate of the relative amounts represented in the allocation tables and subaccounts. This information was not required by the Commission and is not necessary to perform our analysis. This information will be obtained at the time the carriers file their actual cost allocation results with the Commission. *See Automated Reporting Requirements*, 2 FCC Rcd 5770 (1987). Similarly, the mechanics of how carriers forecast shared use of network plant is not an area we will investigate in the context of the manual review process, provided that the carrier demonstrates an understanding of our rules regarding forecasting.

[13] *Joint Cost Order* at 1335 and *Reconsideration Order* at 6295-98.

[14] *Joint Cost Order* at 1345, *amended by Reconsideration Order*, at 6308-09.

[15] *Joint Cost Order* at 1343, *amended by Reconsideration Order* at 6308-09.

[16] *Joint Cost Order* at 1328.

[17] Ohio Comments at 4.

[18] BellSouth Comments at 2-3.

[19] Ameritech Reply at 19-20.

[20] In reaching our decision concerning Bellcore's status, we have examined the pleadings submitted on the issue in the other Bell Operating Company manuals on file. *See* Comments of the Pennsylvania Office of Consumer Advocate at 16-17 and Reply of Bell Atlantic at 9, n. 28, in AAD 7-1671.

[21] Furthermore, the definitions of "affiliated companies" and "control contained in the revised USOA state that an affiliate relationship exists even if the power to direct a company is exercised "in conjunction with, or pursuant to an agreement with, one or more other companies, and whether such power is established through a majority or minority ownership or voting of securities . . . " 51 Fed. Reg. at 43540. Even if we were to assume *arguendo*, that the revised USOA definitions are inapplicable to the affiliate transactions rules, the reasons for distinguishing between the Bellcore relationship and the relationship the BOCs might have with other companies in which they have a less than controlling interest is Bellcore's unique status as a central services organization composed exclusively and equally of the seven regional companies.

[22] IBM Comments at 11, n. 21.

[23] Ameritech Manual at V-1.

[24] Ameritech Manual at V-2.

[25] We will discuss our concerns regarding Ameritech's provision of official communications in Section III., A., *infra*.

[26] *Id.* Comsubs are sales subsidiaries of the Ameritech operating companies.

[27] Ohio Comments at 2-3.

[28] Ameritech Reply at 18.

[29] *Reconsideration Order* at 6298 and n. 204.

[30] *Joint Cost Order* at 1328.

[31] MCI Comments at 7.

[32] Ameritech Reply at 11-12.

[33] For example, to the extent employee training is provided to affiliates, the costs of training an affiliate's employees should fall under the affiliate transactions rules.

[34] *Joint Cost Order* at 1321-1322.

[35] Ameritech Manual at VII-1.

[36] *Id.* at VII-10.

[37] Ohio Comments at 4.

[38] MCI Comments at 10.

[39] Ameritech Reply at 20-21.

[40] *Id.* at 14.

[41] *Reconsideration Order* at 6305.

[42] Ameritech Manual at VII-10.

[43] *Joint Cost Order* at 1319.

[44] *Reconsideration Order* at 6288.

[45] BellSouth Comments at 3-5 and PacTel Comments at 2-4.

[46] These parties also submitted comments on the issue in advance of the adoption of the *Reconsideration Order*.

[47] Ohio Comments at 4-5

[48] IBM Comments at 2-11.

[49] Ameritech Reply at 4-7.

[50] *Reconsideration Order* at 6288.

[51] Ohio Comments at 3.

[52] Ameritech Reply at 18.

[53] *Joint Cost Order* at 1304.

[54] Ameritech Manual at VI-3.

[55] MCI Comments at 20-22.

[56] *But see* general discussion of forecasting and the true-up process at Ameritech Reply at 7, n.10.

[57] *Joint Cost Order* at 1320.

[58] Ameritech Manual at VI-7 to VI-27.

[59] MCI argues that Ameritech has neglected to describe its procedures for directly assigning costs. MCI Comments at 9. In response, Ameritech has amended its manual to provide additional information on direct assignment. Ameritech Reply at 13, n. 20, *amending* Ameritech Manual VI-15. We find that the information provided by Ameritech concerning direct assignment of costs is sufficient.

[60] Ameritech Manual at VI-7.

[61] *See* MCI Comments at 9.

[62] Ameritech should also provide an explanation for "Analysis of Projects," used to allocate Account 6724, Information Management, beyond the explanation provided in the comments column to the table.

[63] Ameritech Manual at VI-16.

[64] *Joint Cost Order*, 2 FCC Rcd at 1318.

[65] Ameritech also refers to its official communicationsservice as providing "inter-MSA toll" service to affiliates. We direct Ameritech to describe the nature of the official communications services at provides to affiliates and to nonregulated activities.

[66] *Joint Cost Order* at 1328.

[67] *Automated Reporting Requirements*, 2 FCC Rcd 5770 (1987) at Appendix C.

[68] These accounts will be provided for in future releases of *Automated Reporting Systems* reporting formats.

[69] Ameritech should continue to provide a apportionments for Account 1439, Deferred Charges, Account 2004, Telecommunications Plant Under Construction - Long Term, and Accounts 7150, Gains and Losses from Disposition of land and Artworks.

[70] AT&T Comments at 3-4.

[71] Ameritech Reply at 9.

[72] MCI Comments at 12-17.

[73] Ameritech Reply at 15-16.

[74] AT&T Comments at 4-5.

[75] Ameritech Reply at 9-10.

[76] *Procedures for Implementing the Detariffing of Customer Premises Equipment*, CC Docket No. 81-893, 95 FCC 2d 1276 (1983) (detariffing AT&T's embedded CPE), *modified on reconsideration* 50 Fed. Reg. 9016 (1985); *Second Report and Order*, 98 FCC 2d 814 (1984) (detariffing of mobile CPE); *Third* Report and Order, 99 FCC 2d 354 (1984) (detariffing the independent local exchange carriers; state-tariffed CPE); Fourth Report and Order, 49 Fed. Reg. 47,265 (1984) (detariffing CPE owned by Western Union and the international record carriers); Fifth Report and Order, 49 Fed. Reg. 46,378 (1984) (addressing accounting procedures to be followed for detariffing CPE); Sixth Report and Order, 50 Fed. Reg. 1525 (1985) (establishing a framework for detariffing National Security and Emergency Preparedness (NSEP) CPE); and Seventh Report and Order, FCC 86-17, released January 23, 1986 (detariffing federally-tariffed CPE owned by the independents and NSEP CPE).

[77] BOC CPE Relief Order, 2 FCC Rcd 143 (1987), modified on recon. FCC 87-389, released December 17, 1987.

[78] *See* MCI Comments at 9.

[79] AT&T Comments at 2, n.*.

[80] Ameritech Reply at 8, n. 11.

[81] Joint Cost Order at 1326.

[82] Ohio Comments at 3-4.

[83] Ameritech Reply at 19.

[84] Ameritech must also amend its table to include Accounts 5301 and 5302. At present, the only reference to these accounts is at page VI-2.

[85] AT&T Comments at 2-3.

[86] Ameritech Reply at 8.

[87] For example, it may be more likely that a new, nonregulated activity will employ rented space, while a mature regulated operation probably owns the space it uses.

[88] MCI Comments at 17-19.

[89] Ameritech Reply at 17.

[90] Cf. Joint Cost Order at 1318. If we find that the marketing allocator is used to allocate a large percentage of marketing expenses, we will require carriers to amend their cost allocation procedures.

[91] Ameritech Manual at VI-22.

[92] MCI Comments at 19-20.

[93] MCI Comments at 19.

[94] Revised manuals shall be served on all parties to the Ameritech manual proceeding.

[95] One copy will be made available in the Accounting and Audits Division reference room, while the other will be maintained for staff use.

[96] Joint Cost Order at 1328-29.

[97] Automated Reporting Requirements, *supra* at para. 46.

[98] We shall establish identical updating criteria for each of the BOCs. This action is consistent with the authority delegated by the Commission in the Joint Cost Order.

[99] A stay of the effectiveness of a proposed change to the manual shall not be for longer than 180 days.

[100] Of course, changes to corporate structure that also affect cost categories need to be filed in advance of implementation, as discussed *supra*.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Southwestern Bell Telephone Company's Permanent Cost Allocation Manual for the Separation of Regulated and Nonregulated Costs	AAD 7-1694

MEMORANDUM OPINION & ORDER

Adopted: December 28, 1987 Released: January 29, 1988

By the Chief, Common Carrier Bureau:

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I. INTRODUCTION AND BACKGROUND

1. On August 31, 1987, Southwestern Bell Telephone Company (Southwestern)[1] filed a cost allocation manual pursuant to the *Joint Cost Order* [2] governing the accounting separation of Southwestern's regulated and nonregulated costs. Consistent with the requirements of the *Joint Cost Order*, the manual is intended to be used on and after January 1, 1988, the same day that the revised Uniform System of Accounts is scheduled to become effective. [3] The manual includes a list of Southwestern's nonregulated activities, a list of activities Southwestern treats as incidental to regulated for accounting purposes, information on affiliate transactions, information on employee time reporting, and information describing the allocation of each revised USOA account between regulated and nonregulated activities.

2. Four parties filed comments on Southwestern's manual and Southwestern filed a reply.[4] In addition to reviewing the pleadings, we have conducted our own review of Southwestern's manual for consistency with the Commission's rules. We have concluded that although the Southwestern manual is deficient in some respects, the format and content generally provide the Bureau with sufficient understanding of the proposed cost allocation procedures to permit us to make an informed judgment as to the ability of the manual to discourage cross subsidy. We conclude that, overall, Southwestern's manual provides sufficient assurance against the misallocation of costs and revenues to permit its implementation on January 1, 1988.

3. We require, however, in specific instances Southwestern specify in greater detail the procedures it intends to follow in allocating the costs and revenues of regulated and nonregulated activities and to correct ambiguities omissions in the manual. We shall require Southwestern to submit revisions to its manual, and we shall solicit public comment on them. Any revisions to the manual that result from the instant Order approving the manual or a subsequent order concerning the revisions, will be made retroactive to January 1, 1988. Requiring that all revisions to the proposed manual be retroactive eliminates the necessity of having a manual that is fully approved in advance of its implementation date. We therefore approve Southwestern's cost allocation manual subject to a number of conditions and requests for further information.[5]

4. This Order is divided into three substantive sections. Section II discusses general issues raised by the manual, including the narrative portions that relate to incidental activities, affiliate transactions, and employee time reporting. Section III discusses issues raised in connection with specific accounts. Section IV contains information concerning the update of Southwestern's manual and other procedural matters.

II. GENERAL ISSUES

A. Overall Sufficiency of the Manual

5. The *Joint Cost Order* listed five types of information that must to be included in the cost allocation manuals: (a) a description of each of the company's nonregulated activities; (b) a list of all the activities to which the company now accords incidental accounting treatment, and the justification for treating each as incidental; (c) a chart showing all corporate affiliates; (d) a statement identifying affiliates that engage in or will engage in transactions with the carrier entity and describing the nature, terms, and frequency of such transactions; and (e) for each USOA account and subaccount, detailed specifications of the cost categories (or cost pool) to which amounts in the account of subaccount will be assigned and of the basis on which each cost category (or cost pool) will be apportioned.[6] In addition, manuals must contain a description of the methods used to teach, monitor, and enforce accurate time reporting, along with a description of the allocation of nonproductive time.[7]

6. The Commission found that the level of detail reflected in the selection of cost categories would be governed by the degree to which a carrier is engaged in nonregulated activities. Moreover, the number of cate-

gories will be dictated by the costs of developing cost categories and whether additional categories would in fact yield more accurate allocation results. Finally, the Commission noted that some degree of importance must be attached to the relative stability of cost categories in order for the cost allocation manuals to be administered on an orderly basis.[8]

7. MCI argues that the Southwestern manual will not ensure compliance with the basic policy objectives expressed by the Commission in the *Joint Cost Order* and will not facilitate effective audit and review of the cost allocation process. MCI observes that while Southwestern asserts that various cost pools will "contain only homogeneous cost data," and that such homogeneity of cost pools is essential to proper cost allocation, the information provided in the Southwestern manual regarding the cost pools and the pooling procedures is inadequate to provide an effective basis for review and future audit. Likewise, MCI notes that Southwestern's proposed cost apportionment procedures lack adequate descriptions and meaningful justifications for their use.[9]

8. Southwestern replies that its manual fully complies with the level of detail required by the *Joint Cost Order*. Southwestern argues that its manual provides allocation procedures that are more detailed than the Separations Manual, which the Commission cited as an example for carriers to follow in developing their joint cost manuals. Furthermore, Southwestern states that the manual contains detailed cost information at the function code level, the lowest level of detail available in the Southwestern accounting system. Southwestern also argues that specific challenges to the Southwestern manual made by other parties illustrate the sufficiency of detail.[10]

9. Our analysis of Southwestern's manual reveals a number of ambiguities and omissions, but we believe that these problems may be readily cured by the submission of additional information and amendment. Our assessment of the sufficiency of the Southwestern manual has focused on whether the manual includes the subject-matter areas mandated by the Commission, and whether cost allocation information is provided in enough detail for us to determine if cost allocations will be performed in a manner that minimizes the potential for cross subsidization. Cost manuals must provide a clear understanding of the basis upon which cost pools are formulated and of how the costs reflected in those cost categories will be allocated between regulated and nonregulated activities. In a number of specific instances, the Southwestern manual falls short of providing the clear level of understanding necessary to comprehend how cost allocations are being performed for all cost pools. In addition, while Southwestern's manual includes the subject-matter areas required by the Commission, the information provided is not discussed in the detail we would like. The deficiencies, however, do not warrant rejection of Southwestern's manual. The addition of greater detail and explanation should serve to resolve most of our questions. The additional detail that we require Southwestern to submit should respond to MCI's concerns that the manual lacks sufficient justifications and explanations of pooling decisions and apportionment procedures. We will permit public comment on any changes that Southwestern makes to its manual as a result of this Order.[11] In order to provide guidance to Southwestern in fashioning its revisions, we will address each of the issues raised by the commenting parties, along with additional issues we ourselves have identified.

B. Affiliate Transactions

10. The affiliate transactions rules were created to discourage carriers from avoiding the cost allocation rules by offering activities through a different corporate entity.[12] Rules governing transactions between a carrier and its affiliates are different depending upon whether the transaction involves a transfer of assets or the provision of a service.[13] Asset transfers between affiliates should be recorded at the prevailing price held out to the general public. If no prevailing price is available, asset transfers from the affiliate to the carrier should be recorded at the lower of net book cost or fair market value. Asset transfers to the affiliate from the carrier should be recorded at the higher of net book cost or fair market value. In the case of services, costs should also be recorded at a tariff rate or prevailing price if one exists.[14] Absent a prevailing price, the cost of the service should be allocated pursuant to the cost allocation standards of Section 64.901 of the Commission's Rules.[15] The *Joint Cost Order* also required that carriers include in their cost allocation manuals "[a] statement identifying affiliates that engage in or will engage in transactions with the carrier entity and describing the nature, terms, frequency of such transactions."[16]

11. Southwestern's manual contains a 14-page affiliate transaction section that lists, and briefly describes, a number of transactions between Southwestern and its nonregulated affiliates. We have discovered a number of problems with this section. Southwestern states at the beginning of its affiliated transaction section that "[a]ssets will be transferred between affiliates in accordance with the Rules finally established by the Commission. Sufficient documentation will be maintained to allow Commission staff auditors the capability to assess the propriety of these transactions."[17]

12. As an initial matter, the manual makes no mention of complying with the Commission's rules regarding the transfer of services. Further, it is not always clear from Southwestern's descriptions of its transactions whether the assets or services rules would apply. For example, the first eight pages of Southwestern's affiliate transaction section list 38 types of affiliate transactions to be provided "by the telephone company to affiliates on an 'as requested' basis." While most of these appear to be services, some may involve the transfer of assets.

13. The list and brief descriptions of the transactions that Southwestern provides also generally fail to disclose the terms and frequency of the transactions. Although Southwestern has provided information on the frequency of billing, the Commission's requirements address the frequency of the transactions themselves. Southwestern has described the terms of the transactions in a few cases, but it is impossible to determine if those terms comply with Section 32.27 of the Commission's rules.

14. In addition, while Southwestern has specifically identified the affiliates and the transactions from affiliates to its carriers, it has only provided a generic list of transactions provided by the carriers to the affiliates. From the information in the manual, it is impossible to discern the specific affiliate that receives the good or service.

15. The absence of information necessary to review the transactions and to determine which of the Commission's rules applies, makes it impossible for us to make a determination that Southwestern has correctly represented that its affiliate transactions do comply with the requirements of the *Joint Cost Order* and *Reconsideration Order*. The absence of such information will also impede the auditability of the manual, since auditors would be unable to determine whether Southwestern is following the correct affiliate transactions rule. Southwestern must therefore amend its manual to include more specific information on the nature, terms and frequency of its affiliate transactions with a view toward providing us with sufficient information to determine that it understands, and will comply with, the Commission's rules.[18] Finally, we will require Southwestern to comply with the Commission's requirements to submit a "chart" of its corporate structure. Southwestern has submitted only a list of its affiliates so that it is impossible to understand the corporate relationships that exist. We require Southwestern to amend its manual accordingly.[19]

C. Incidental Activities

16. The *Joint Cost Order* recognized that carriers provide a number of miscellaneous activities that cannot be classified as regulated but that have traditionally been recorded in regulated books of account as a matter of convenience. The *Joint Cost Order* required carriers to include a list of these incidental activities in their manuals along with a justification for treating these activities as incidental.[20] The four criteria for classifying an activity as incidental are: a) the activity must be an outgrowth of regulated operations; b) the activity cannot constitute a separate line of business; c) the activity must have been traditionally treated as regulated for accounting purposes; and d) the total of all incidental activities' revenues must not exceed one percent of a carrier's total revenues.

17. In its manual, Southwestern provides a list of its incidental activities. Southwestern represents that each of the activities listed meets the Commission's qualifications. In order for us to determine that Southwestern's conclusions are correct, more information on these activities is required. First, Southwestern needs to demonstrate whether each activity meets the Commission's criteria. For example, Southwestern has not demonstrated that any of its incidental activities have traditionally been treated as incidental for accounting purposes. Southwestern must amend its manual to make the specific showings required in the *Joint Cost Order*.[21] Moreover, some of the incidental activities listed may be activities which are provided to affiliates and should therefore properly fall under the scope of our affiliate transactions rules. More information is needed to determine whether the activity is properly designated as incidental. For example, "federal coordination services" and "sale of excess seats or course materials in courses developed and taught for internal telephone company use" are quite possibly activities that are provided in whole or in part to affiliates. To the extent that these activities constitute affiliate transactions, their costs must be recorded according to the affiliate transactions rules. Southwestern must therefore provide an explanation of whether the incidental activities listed are being provided to affiliates and how those transactions comply with the Commission's rules.

D. Time Reporting

18. The *Joint Cost Order* permitted carriers to select from among several methods of recording employee time. The Commission reasoned that, since wages and salaries would serve as an important technique in the allocation of costs, it was important that carriers use accurate methods of recording employee time. The Commission further found that no one time reporting system would provide accurate results in all situations. Carriers were therefore free to propose the use of positive time reporting, exception time reporting, or time and motion studies.[22]

19. Southwestern's manual provides a variety of information concerning its time reporting requirements. According to the manual, Southwestern will utilize positive time reporting, exception time reporting, and a third type of time reporting based on surveys of employees' regular job functions.[23]

20. We believe that Southwestern's time reporting requirements are deficient in several respects. First, Southwestern must provide additional information on the personnel that are required to time report. It is unclear from the text of the proposed manual which personnel are subject to which type of time reporting. In amending its manual, Southwestern must also state whether the time reporting methods apply to support staff and managers of functional work groups. Southwestern must revise its manual accordingly.

21. In addition, we require Southwestern to submit more information concerning the surveys it proposes to use to measure some employees' time. We are not clear as to whether Southwestern intends to survey all employees in the work groups subject to survey, or will utilize a sampling of employees. Southwestern has also not provided any information on when, and how often, surveys will be conducted. In amending its manual, Southwestern must provide us with sufficient information to ensure that the survey results will be both valid and reliable.

22. Finally, we require Southwestern to explain in greater detail its method of calculating nonproductive time for employees subject to exception time reporting. Southwestern's manual states that nonproductive time will be allocated between regulated and nonregulated activities "based upon a ratio of payroll hours within a functional work group reported to productive and nonproductive payroll codes."[24] It is not clear if the ratio – total nonproductive hours divided by total payroll hours – refers to all employees subject to exception time reporting or some subset of that group. We require Southwestern to clarify its procedures.

E. Avoidance of Tariffed Rates

23. The *Joint Cost Order* established a hierarchy of cost allocation principles for carriers to follow in formulating their cost allocation proposals. The first principle, contained in Section 64.901 of the Commission's Rules, is that nonregulated activities must be charged at a tariffed rate for services that are offered under tariff.[25] Western Union argues that the Southwestern manual evidences an intent on the part of Southwestern to avoid that cost principle, and instead allocate costs as if no tariff rate existed. Western Union observes that Southwestern does not propose to charge nonregulated service for all transmission plant at tariffed rates.[26] This practice, according to Western Union, would place carriers in a position to provide communica-

tions facilities and services to their nonregulated services under preferential cost-sharing arrangements not available to their competitors.[27]

24. Southwestern replies that its manual provides that "[n]onregulated activities will be charged the tariffed rate for tariffed services used in the provision of nonregulated activities."[28] Southwestern admits that this does not preclude it from utilizing the joint cost procedures if tariffed services are not used, but Southwestern notes that it fully responded to this issue when Western Union raised it on reconsideration of the *Joint Cost Order*.

25. We believe that Western Union's argument illustrates an ambiguity in the manual. Southwestern's cost allocation provisions indicate for a number of cost pools, that investment will be assigned to regulated activities. But Southwestern has not explained when tariff rates will determine the cost of this assignment. The cost allocation table, therefore, does not reflect Southwestern's assertions, made elsewhere in its manual, that it will in fact apply tariffed rates when they are available. Southwestern must therefore amend its manual to make clear when tariff rates apply.[29]

F. Joint Use of Network Plant

26. *Central office equipment and outside plant.* In the *Joint Cost Order*, the Commission established that jointly-used network plant must be allocated based on a forecast of the peak relative nonregulated usage of the plant over its entire depreciable life. The Commission elected to adopt a forecasted use approach in order to reflect the nature of capital investment decisions, *i.e.*, that investment decisions are made in anticipation of future use.[30] On reconsideration, the Commission reduced the length of the forecast period to three years in recognition of the practical difficulties of forecasting relative use over a lengthy depreciation period.[31] Carriers could request a forecast period of less than three years if they provided a detailed, specific showing justifying the shorter period.

27. Southwestern submitted a "specific showing"[32] to demonstrate that its actual planning periods do not track depreciation lives but rather Southwestern's own network planning intervals (NPI). In the specific showing, Southwestern argues that the NPI is the appropriate period over which to forecast relative peak nonregulated usage of network common investment because this time interval represents the period over which newly engineered and installed network common investment is expected to have sufficient capacity to satisfy customer needs. The NPI is generally two years for central office equipment and five years for outside plant, according to Southwestern. Southwestern notes that use of the NPI is standard operating procedure in the telecommunications industry and the practice is consistent with the spirit and intent of the Commission's *Joint Cost Order*.

28. In addition, Southwestern argues that deferrable plug-ins should also be exempted from the relative peak forecast requirement. Southwestern states that deferrable plug-ins have an effective NPI of zero years, and, that due to their modularity, are installed to satisfy present needs rather than forecasted future needs. Southwestern argues that deferrable plug-ins are generally maintained in its inventory no longer than 60 days. Southwestern concludes that long-range forecasts would have little relevance to the actual provisioning of such modular investment, and that plug-ins ought to be allocated based on current use of associated hard-wired equipment.

29. Two commenting parties objected to Southwestern's approach to forecast jointly-used network plant.[33] IBM comments that Southwestern has ignored the Commission's rule that central office equipment and outside plant costs be allocated between regulated and nonregulated activities based upon their peak relative nonregulated usage. IBM argues that Southwestern's proposal alters the investment risk balance created by the Commission's rules and should not be approved.[34] MCI adds that, for deferrable plug-ins, Southwestern should be required to justify why its approach is preferable to direct functional examination of the equipment (on an independent basis) for costing purposes. MCI states that if the plug-in equipment that has not yet been interconnected is apportioned based on current central office equipment relative use, improper cross-subsidization may result because current usage is not an accurate measure of costs that reflect future usage. MCI argues that Southwestern should, at a minimum, be required to define precisely what types of equipment it proposes to include in the plug-in category. Additionally, MCI contends that Southwestern should be required to provide an indication of the anticipated size of plug-in equipment category and a discussion of the average period of time during which plug-in equipment remains in inventory prior to interconnection.[35]

30. Southwestern responds to IBM's criticisms by stating that its proposed forecast periods do not alter the investment risk balance. Southwestern also observes that its specific showing for central office equipment and outside plant appears to be mooted by the Commission's adoption of a three-year forecast for all network common investment. In addition, Southwestern argues that deferrable plug-in equipment cannot be directly assigned due to the large number of plug-ins. Southwestern also states that there is no reason to distinguish between interconnected plug-ins and those that have not been interconnected because plug-ins are used within 60 days. Southwestern states that deferrable plug-ins are best allocated based on associated hard-wired equipment.[36]

31. The *Reconsideration Order* reduced the length of the forecast period for shared network investment from depreciable life to three years in recognition of the practical difficulties of forecasting relative usage over a lengthy period.[37] The Commission also established that carriers seeking to forecast shared network plant for a period shorter than three years would have to make a specific, detailed showing to justify a shorter forecast period. Carriers seeking to use forecast periods shorter than three years are required to demonstrate that: (a) the relevant engineering planning period is less than three years; (b) the planning and deployment process is not merely an activation of capacity already in place but not yet in service; (c) the use of a shorter forecast period will result in substantially more accurate forecasts and therefore more accurate cost allocations; and (d) the costs of implementing the shorter periods do not outweigh the benefits.[38]

32. While Southwestern argues that the forecast period issue is moot, it does not offer to withdraw its request or amend its manual to comply with the Commission's decisions. We therefore must deny Southwestern's request. The Commission's decision to reduce the forecast period for common network plant from depreciable life to three years substantially alleviates the problems Southwestern argues exist with respect to lengthy forecast periods. Furthermore, Southwestern has not met the tests for reducing

the forecast period below three years. We direct Southwestern to amend its manual to comply with the three-year forecasting period for network plant adopted in the *Reconsideration Order*.[39]

33. We likewise deny Southwestern's request to exempt deferrable plug-ins from the relative peak nonregulated usage requirement for shared network plant. In an earlier *Memorandum Opinion and Order* in connection with plug-ins,[40] we found that plug-ins would be playing an ever-increasing role in providing many of functions necessary to provide a communications channel. We noted that this evolutionary process carries with it the implication that plug-ins appear to be a piece-part of the central office, and will soon, if not already, comprise the bulk of the centralized switching process. Furthermore, in the *Bell Atlantic Order*,[41] we determined that it is possible to track investment in deferrable plug-ins. We also stated that a statistically acceptable sampling technique could be used in lieu of direct assignment, to determine relative investment in deferrable plug-ins. Southwestern has provided us with no reason to alter our conclusions. Accordingly, we deny Southwestern's request to allocate deferrable plug-ins based on methods not reflected in the Commission's rules.

G. True-up Procedures

34. The *Joint Cost Order* established that carriers must forecast peak relative nonregulated usage of jointly-used network plant, but it did not establish requirements for forecasting procedures. Rather than focusing on the process of forecasting peak relative nonregulated use, the Commission focused on the results of such forecasts. If actual nonregulated usage is greater than forecasted usage, carriers are required to reallocate plant from regulated to nonregulated activities at undepreciated baseline cost plus an interest charge, equivalent to the authorized interstate rate of return.[42] The Commission found that this "true-up" procedure would discourage underforecasting of nonregulated usage.

35. MCI argues that Southwestern's true-up mechanism does not provide an effective deterrent against underforecasting because it does not provide a sufficient penalty.[43] Southwestern replies MCI's criticisms should be denied because they are inconsistent with the principles adopted by the Commission in the *Joint Cost Order*.[44] Southwestern adds that MCI has erred in suggesting that the interest charge adopted by the Commission is not sufficient to deter underforecasts because nonregulated services are burdened with paying an interest penalty plus the underlying depreciation on the transferred investment.

36. MCI's arguments misconstrue the requirements of the *Joint Cost Order*. Once a carrier predicts peak relative nonregulated usage of network plant, the carrier is required to track the actual nonregulated usage of the plant to discover if the forecast has underestimated actual usage. If an underestimation occurs, the carrier is required to reallocate investment apportioned to regulated activities to nonregulated activities at undepreciated baseline cost. In order to discourage carriers from underestimating nonregulated usage, and thereby shifting the investment risk to regulated operations, the Commission also required that the carrier's nonregulated operations compensate the regulated operations by paying an interest charge equal to the carrier's authorized interstate rate of return on the plant to be reallocated. In the *Joint Cost Order*, the Commission stated that this interest charge would operate to discourage underestimation of nonregulated usage of network plant. However, the Commission did not require that any "penalties" over and above this interest charge be paid by the nonregulated activity.[45] MCI's argument is therefore without basis.

III. ACCOUNT-BY-ACCOUNT ANALYSIS

37. Southwestern's manual provides an intricate and detailed system for the allocation of costs. First, Southwestern's manual describes four types of cost pools that it proposes to use in its apportionment process for common costs – (a) common investment pools, (b) investment-related common expense, (c) final common expense, and (d) general overheads. In addition to apportioning costs to these four types of pools, Southwestern states that it uses direct assignment of costs to ensure that its costs are fully distributed between regulated and nonregulated activities. For each type of cost pool created, Southwestern has provided a list of specific cost pools it proposes to create. In some cases, Southwestern also lists an apportionment basis for the specific cost pools.[46]x After discussing its various cost pools, Southwestern provides a "supporting schedule," to illustrate the different cost pools for support assets, central office equipment, and outside plant. Finally, Southwestern provides a lengthy "Cost Pool Matrix" that provides cost apportionment procedures by USOA accounts.[47] Various parties have raised issues with respect to individual accounts and the cost pools contained in the table. In addition, we have reviewed the cost apportionment proposals and have identified additional issues to be resolved. Before discussing specific account issues, however, some general problem areas have been identified that relate to multiple accounts.

A. Identification of Cost Pools

38. *Methodology*. MCI argues that Southwestern has failed to explain the methods it used in identifying cost pools. According to MCI, this failure makes effective review and future audit of the manual impossible.[48] In addition, MCI argues that if large and heterogeneous cost pools are created, Southwestern may be able to skew usage projections by adding new investments in such a way as to offset any previous underforecasting of nonregulated usage. In this way, MCI argues, Southwestern could avoid any true-ups of its relative nonregulated and regulated costs.[49] Southwestern does not specifically respond to these arguments.

39. We believe Southwestern's explanation of its cost pool apportionment process requires supplementation. First, although Southwestern has identified four types of cost pools, it has made little effort to distinguish between them or explain what is included in each type. For example, one type of cost pool is labelled "investment-related common expense," while another is termed "final common expense." The former appears to include depreciation and maintenance expense for network and non-network plant. The latter group, "final common expense," appears to include other expenses related to network plant, as well as non-network expenses, such as those involving accounting and marketing. In order to understand Southwestern's cost pool methodology, we must ascertain the distinctions it makes between the various types of cost pools. While the distinctions Southwestern is drawing between types of common cost pools are not required by the Commission's rules, if distinctions are going to be drawn they must be

understandable. Southwestern is therefore directed to amend its manual to provide an explanation of the distinctions it is making between its various types of pools.

40. *Common investment pools.* We also require additional information on how individual pools are created. Southwestern provides a list of 18 types of common investment pools, along with a basis upon which costs are assigned to those pools.[50] For example, one of the types of investment pools is "traffic sensitive inter-office conversation related," which it states is "assigned"[51] between regulated and nonregulated activities based on "interoffice minutes." Southwestern then provides for the following specific investment pools related to interoffice conversations: "land in support of inter-office conversation related central office equipment," " tools and other work equipment in support of inter-office conversation related central office equipment," " central office and circuit equipment costs, by technology type, incurred to maintain an interoffice talking path through the central office," etc.

41. As an initial matter, we have been unable to distinguish between the 18 types of investment pools and ascertain whether this list represents all of the possible common functions and services of network plant investment. We also have been unable to discern if these 18 types of investment costs are discrete and do not overlap.[52] Moreover, we have serious doubts as to whether many of these common investment pools are required in order to produce a cost manual adequate to the Commission's purposes. The only network "common investment" that appears to exist today is the portion of digital electronic central office switch that provides protocol processing functions. Inclusion in the manual of common investment pools that relate to hypothetical joint use of network plant creates a number of ambiguities that hinder our review process and interfere with auditability. Southwestern must delete "common investment" cost pools for network plant that will not currently or imminently be used jointly by regulated and nonregulated activities.

42. *Investment-related expense pools.* In describing its investment- related expense cost pools and designation codes, Southwestern explains that pools that are designated with a capital "D" in their title include depreciation and interest expense, and "are assigned to products based on forecast use of common plant." We find this statement confusing. Only a very limited amount of network plant must be allocated pursuant to the Commission's forecast rules, given the list of nonregulated activities that Southwestern has provided. Furthermore, forecasted use is a technique that is to be used only in apportioning shared investment costs. The Commission did not intend for forecasts to be used to allocate expenses, including depreciation expenses. In fact, the *Joint Cost Order* specifically provides that most expenses shall be allocated based on related investment.[53] We direct Southwestern to clarify its statement regarding to allocation of depreciation expense, and if necessary to amend its manual to comply with Commission requirements.

43. *Excessive detail in deriving cost pools.* In its "Cost Pool Matrix" detailing cost apportionment processes by USOA account, Southwestern has disaggregated USOA accounts to a level of detail based on Southwestern's internal accounting codes. For many accounts, Southwestern has proposed two or more cost pools that are apportioned identically but have different internal accounting code. We require Southwestern to combine these pools whenever possible. This would reduce the number of cost pools without changing the end results of Southwestern's proposed allocations and apportionments. Account 6623, "Customer Services," provides a good example.[54] Internal accounting codes, 23F2, 23F3 and 23F4, create a cost pool for international message telephone service which is to be directly assigned to regulated. Two other international message telephone service cost pools under Account 6623 that are directly assigned to regulated activities: one identified by code 12E2 and another identified by codes 23F2, 23F3, 23F4, and 12E2. We see no reason why these three international message services cost pools could not be consolidated into one cost pool under Account 6623. The network channel terminating equipment pools, also in Account 6623, provide another example of this multiple listing of pools that are apparently identical. We require Southwestern to examine its manual for apparently duplicative cost pools and to combine these pools, unless it can explain why combining these costs would interfere with its cost allocation procedures. We believe that changes of this nature will not in any way impair the homogeneity of the cost pools.

B. Proposed Cost Apportionment Methods

44. For some of its cost pools, Southwestern has provided apportionment methods for the separation of regulated and nonregulated costs. In the case of the "common investment" pools, Southwestern lists an apportionment method for each of the 18 types of "common investment" it identifies in its manual.[55] None of these apportionment bases is explained in the manual, and quite often it is not apparent how the proposed apportionment factor would operate. For example, Southwestern states it will separate customer account related billing investment costs based on "customer accounts." It is not clear how Southwestern proposes to use customer accounts to measure the relative regulated and nonregulated billing investment. The same problem exists with regard to each of the other cost pool "types" and their proposed apportionment bases. In amending its manual, Southwestern must provide detailed explanations of its proposed methods, so that we can determine if the investment will be allocated properly.

45. For investment-related common expense pools, apportionment bases are provided for some pools, but not for others. The first nine cost pools listed, which represent investment-related expenses for non-network plant, do not contain a definite allocation methodology. Southwestern simply states that these pools will be allocated based on "relative regulated and nonregulated wages and salaries when no other assignment methods are available."[56] We do not understand why Southwestern has failed to provide a definite allocation methodology. As we have previously discussed, the Commission itself stated that most expenses would be apportioned based on relative investment.[57] Furthermore, maintenance expenses are to be based on actual usage of the investment.[58] Southwestern must therefore amend its manual to provide an allocation mechanism for all of its cost pools.

46. For the remainder of the investment-related common expense pools, Southwestern also needs to explain its proposed apportionment methods in greater detail. In addition to deleting the forecasting usage method for its depreciation pools, which we have already discussed, Southwestern must provide some additional information on maintenance expense allocations. We note that in its manual, Southwestern has elected to base its apportionment of maintenance costs on actual use of the invest-

ment. Actual use is an apportionment method that is only required in the case of maintenance expenses for shared network plant. If a carrier elects to employ actual use for other maintenance costs, however, the carrier must disclose its measurement proposals so that we can ascertain if those proposals are logical. To the extent Southwestern intends to use actual use as an allocator for its maintenance expenses, we require it to specify its proposed measurement technique for each pool.

47. Similar problems of ambiguity and vagueness also arise with respect to the proposed apportionment bases for "final common expense" pools. No information is provided on the proposed allocators, many of which appear to be similar to those used in the common investment pools.

48. We also question Southwestern's provision for its "general overheads" cost pool.[59] Southwestern has provided only one apportionment basis for all costs that are considered overhead -- the general allocator. The Commission, however, adopted two distinct allocators to be used for costs that cannot otherwise be attributed -- the general allocator and the marketing allocator. The general allocator is a ratio of all regulated and nonregulated expenses directly assigned or attributed. The marketing allocator is a ratio of all expenses in Accounts 661-6613 and in certain subsidiary records in Accounts 6623 and 6722.[60] Southwestern must amend its manual to provide for both the general allocator and the marketing allocator to be applied to unattributable general or marketing costs.[61]

49. Perhaps the most significant flaw in Southwestern's presentation is that the layers of detail concerning the cost pools and apportionment bases create a great deal of ambiguity. When that detail is compared to the subsequent "Cost Pool Matrix," it is difficult to discern how the cost is being allocated. For example, in order to track how Southwestern will allocate the cost of motor vehicles, one must review several different parts of the manual. First, the "Cost Pool Matrix" indicates that Account 2115, Motor Vehicles, is apportionment into two pools, one for small vehicles and one for large.[62] Small vehicles are "assigned on basis of special study." Large vehicles are "assigned on basis of outside plant." However, a few pages earlier, the manual states that small vehicles will be "assigned via special study *or on relative nonreg[ulated] wages and salaries*."[63] Furthermore, although large vehicles are listed in this earlier reference, no allocation mechanism is provided here. Instead, the manual refers the reader to the common investment support pools "K" and "L." Backtracking to an even-earlier reference, we find a listing of two cost pools, "SUP-03-K" and "SUP-03-L," which are described as containing large motor vehicles that support circuit equipment and outside plant providing inter- office transmission, as well as subscriber lines.[64] On yet another page, we learn that "K" designates circuit equipment and outside plant costs, which are apportioned based on "inter-office minutes." The letter "L" designates loop costs, apportioned based on "subscriber loops plus private lines."[65]

50. Multiple references to cost apportionment methods thus create tremendous opportunity for inconsistency and ambiguity. It is very difficult to understand how the different layers of information provided by Southwestern interact to explain how a given cost is apportioned. We believe this feature of the Southwestern manual will interfere with its auditablility, and is a sufficiently severe problem to warrant correction. We also believe, however, that the problems we have identified with the Southwestern cost apportionment information can be readily remedied by deleting the multiple references to cost pools and apportionment bases and better explaining the proposed methodologies within the "Cost Pool Matrix" itself.

51. In revising its matrix, Southwestern must provide explanations of its cost pools and provide a cost apportionment basis for each. We have given Southwestern extensive guidance. We have also directed Southwestern to combine cost pools whenever possible, consistent with the Commission's requirements that pools be homogeneous and that cost pool structures maximize direct assignment or attribution. We have also provided, *infra*, guidance on cost apportionment techniques for individual accounts, although we have not endeavored to identify every inconsistency between the "Cost Pool Matrix" and the cost pool information that prefaces the matrix. Southwestern must therefore amend its cost apportionment information to eliminate the problems we have identified. Southwestern must provide us with a manual that is unambiguous with regard to its cost pools and cost apportionment bases, and that can easily be identified by Commission staff and the independent auditors.

C. Undefined Terms

52. Southwestern's manual uses numerous acronyms and phrases that appear to be unique to Southwestern or its manual. Whenever Southwestern uses such identifications, it must provide a definition for users of the manual. Examples from the "Cost Pool Matrix" are: Account 2211 --the reference in the comments column to "PICS/DCPR (by ECN)", Account 6362 -- the reference to "Megalink II," Account 6532 -- the reference to "VIDEOTEXT," Account 6561 --the assignment to "IRC pools," Account 6612 --reference to "ESSX," Account 6612 -- reference to "MEGALINK I," and Account 7240 -- reference to "NAF." Abbreviations of its cost pools are also confusing. We require Southwestern to re-examine its manual to be certain that all of the words and phrases are easily understood and to provide descriptions of those words and phrases that are not easily recognizeable. Southwestern must provide definitions of all its acronyms, including its cost pool acronyms. A glossary of terms is one acceptable way to revise the manual to meet our requirements.

D. Accounts To Be Added

53. In the *Joint Cost Order*, the Commission required that carriers submit cost allocation proposals for each USOA account and subaccount.[66] This requirement, however, if interpreted literally, would have mandated the allocation of USOA accounts that are unrelated to measures of a carrier's costs and revenues. In the *Automated Reporting Requirements* proceeding, the Commission made public for the first time the list of accounts that would be subject to joint cost reporting. [67] That list was not available until after Southwestern had submitted its manual. As a result, the Southwestern manual does not include a number of accounts that the Commission has determined we must evaluate. Southwestern will therefore be required to amend its manual to include all the accounts named in the *Automated Reporting Requirements* proceeding.

54. In addition to the accounts named in the *Automated Reporting Requirements* order, we have determined that six other accounts must be allocated. Those accounts are: Account 1439, Deferred Charges; Account 2004, Tele-

communications Plant Under Construction - Long Term; Account 4120, Other Accrued Liabilities; Acount 4360, Other Deferred Credits; Account 5050, Customer Premises Revenue; and Account 7150, Gains and Losses from Disposition of Land and Artworks.[68] Southwestern has not provided apportionments for four of these six accounts.[69] In amendments to be filed with its manual, Southwestern must include information on these accounts. A complete list of those accounts which our review discovered missing from the manual is as follows: Accounts: 1130 - Cash; 1140 - Special Cash Deposits; 1150 - Working Cash Advances; 1160 -Temporary Investments; 1220 - Material and Supplies; 3100 - Accumulated Depreciation; 3400 - Accumulated amortization - tangible; 3410 - Accumulated amortization - Capitalized leases; 3420 - Accumulated amortization - Leasehold improvements; 3500 - Accumulated amortization - Intangible; 3600 - Accumulated amortization - Other; 4040 - Customers' deposits; 4100 - Net current deferred operating income taxes; 4340 - Net noncurrent deferred operatin income taxes; 4360 -Other deferred credits; and all 5000 Series accounts.[70]

E. Official Communications

55. The *Joint Cost Order* required that nonregulated activities be charged tariffed rates for services that are offered under tariff.[71] A corollary to that principle, contained in Section 32.27 of the Commission's rules, is that corporate affiliates are to be charged tariffed rates for assets or services provided pursuant to tariff.[72]

56. We have been unable to verify that Southwestern proposes to operate in full compliance with these principles in regard to its provision of "official communications." In the affiliate transaction section of its manual, Southwestern states that it provides official communications to an unidentified list of affiliates. It is not clear whether these official communications services include services or service components that Southwestern provides to others at tariffed rates.

57. In addition, in its cost apportionment proposals for Account 6728, Other General and Administrative expenses, Southwestern does not isolate official communications costs that it provides to its nonregulated affiliates. Instead, the entire account is apportioned with the general allocator. In amendments to its manual, Southwestern must explain how its proposed treatment of official communications in its affiliate transaction section and in its "Cost Pool Matrix" is consistent with the Commission's rules.

F. Specific Accounts

Account 1220-Material and Supplies

58. Southwestern stated that this account would not be allocated because "[c]onsumption of these assets will result in either the recognition of an expense, which will be directly assigned or allocated, or the acquisition of investment, which will be directly assigned or allocated."[73] AT&T is concerned that this account will include certain nonregulated costs such as customer premises equipment and large PBXs held in inventory for sale or lease and that the account should be allocated among regulated and nonregulated services.[74] Southwestern responds that it will amend its manual to reflect a unique code in this account to identify nonregulated CPE costs.[75] While we concur with this revision, Southwestern must also provide a proposed cost apportionment bases for all of the costs in this account, pursuant to the Commission's decision to require allocation of the entire account.[76]

Account 1439-Deferred Charges and Account 4120-Other Accrued Liabilities

59. Southwestern failed to propose allocation methods for these accounts. When Southwestern amends its manual to provide for these accounts, it must divide the costs into several cost pools. For Account 1439, the cost pools shall be for deferred charges related to compensated absences and for deferred charges related to equal access. For Account 4120, one cost pool shall be for liabilities related to compensated absences.

Account 2002-Property Held for Future Telecommunications Use and Account 2003-Telecommunicaitons Plant Under Construction-Short Term

60. Southwestern proposes to assign these accounts to regulated and nonregulated activities based on the corresponding plant in service. Southwestern has not established provisions for any property or plant in these accounts that is intended for shared use. Southwestern must justify why none of the costs in these accounts are common costs that are not susceptible of direct assignment.

Account 2111-Land

61. Southwestern proposes to allocate land in support of central office equipment on the same basis as Account 2121, Buildings. Land in support of equal access and network reconfiguration will be assigned directly to regulated activities. The remaining land in this account will be allocated on the basis of relative wages and salaries.

62. It is unclear exactly what Southwestern's intentions are regarding this account. It appears that land in support of central office equipment (SUP-01) would be allocated on the same basis as all buildings, including those buildings that do not support central office equipment. The remaining land is allocated not on an associated plant account or based on buildings, but on relative wages and salaries. The rationale for this methodology escapes us. Southwestern is directed to provide further explanation and clarification that its proposed methodology will produce reasonable results. We also direct Southwestern to amend its treatment of land supporting central office facilities. We do not believe that its proposed allocation method is sufficiently cost causative.

Account 2112-Motor Vehicles

63. Southwestern provides two cost pools for this account, "Passenger Cars and Small and Medium Trucks without Power Equipment" and "Large Trucks and Other Trucks with Power Work Equipment." In connection with the small vehicles cost pool, Southwestern states that the account is the equivalent of the cost pool. We find this language confusing, and require it to be deleted. Since there are two pools in the account, one pool cannot be the equivalent of the account. In addition, Southwestern proposes to allocate small vehicles to regulated and nonregulated activities on the basis of a special study. Southwestern, however, does not describe of how this special study will be conducted. Our ability to evaluate the proposed cost allocation method depends upon understanding what type of study Southwestern proposes.

Southwestern is therefore directed to amend this account to make clear exactly how it intends to conduct the special study for the allocation of this cost pool.

Account 2113-Aircraft and Account 2114-Special Purpose Vehicles

64. Southwestern provides no allocation methodology for these accounts and the related expenses accounts (Accounts 6113 and 6114). It says these accounts are currently not used. AT&T notes that Southwestern states its manual is to be applied not just to current activities, but to any activities entered into in the future. Therefore, AT&T contends that Southwestern should provide for the allocation of aircraft and special purpose vehicles.[77] In its reply comments, Southwestern states that, "the CAM will be revised to so provide."[78] We have previously discussed our reasons for deleting hypothetical allocations of cost in the case of network plant, and we find the same rationale apples to non-network investment. If Southwestern has no investment or expenses in these accounts, it must simply state that fact in its "Cost Pool Matrix".

Account 2116-Other Work Equipment

65. As in the case of Account 2112 for Motor Vehicles, Southwestern is proposing to employ a "special study" to allocate the cost of one of its two cost pools between regulated and nonregulated activities. No further information is provided about the study. We direct Southwestern to provide additional information concerning its proposed study in sufficient detail for us to determine that the allocation will be reasonable.

Account 2121-Buildings

66. Southwestern proposes to allocate the "Equal Access" and "Network Reconfiguration" cost pools directly to regulated services. The remaining cost pool in this account Southwestern defines as "Acct. less SUP-07," which apparently is allocated based on studies of space usage. While we would infer by this presentation that SUP-07 represents those costs in connection with the "Equal Access" and "Network Reconfiguration" cost pools, Southwestern's mapping matrix defines SUP-07 as buildings associated with non-network common investment. It is therefore not clear from the information Southwestern provides exactly what it intends for this account. Additionally, AT&T argues that Southwestern states in its comments column on this account that "Revenue Accounting space, General Commercial space, Traffic Supervision space and Outside Plant Garages, Warehouses and Storerooms become one cost pool," but that Southwestern fails to indicate how that cost pool will be allocated.[79] Southwestern replies that at Section 6, page 24 (SUP-07 -Buildings) of the manual, it has stated that "[a]dditional assignments for buildings associated with non-network common investment are made via special study or on relative non-regulated wages and salaries."[80] We find that Southwestern has not provided a clear allocation methodology for this account. Southwestern is required to provide detailed information and clarification regarding how this account will be allocated to regulated and nonregulated activities. Any studies that it intends to employ must be explained, and all cost pools must be listed in the cost allocation table.

Account 2122-Furniture

67. Southwestern proposes to allocate this account on the same basis as buildings. AT&T argues that there may be no correlation between the use of a building and an employee's use of a desk or other furniture.[81] AT&T suggests the account be allocated based on wages and salaries. We agree with AT&T for two reasons. First Southwestern's allocation of its buildings account is so vague and confusing that we have found it necessary to require revisions that account. More importantly, wages and salaries appear to be a far more cost causative allocation factor for investment in furniture. Wages and salaries better reflect the relative regulated and nonregulated work effort of the employees using the furniture than does the Southwestern proposal. We therefore direct Southwestern to amend its manual to allocate this account using wages and salaries.

Account 2124-General Purpose Computers

68. Southwestern states that costs will be assigned to regulated or nonregulated activities "if" the cost can be identified by equipment records. Southwestern, however, makes no mention of how costs will be allocated if they cannot be identified by equipment records. Southwestern is required to amend this account to provide specifically for the allocation of common equipment and to eliminate the contingent feature of its present proposal.

Account 2211-Analog Electronic Switching, Account 2212-Digital Electronic Switching, and Account 2231-Radio Systems

69. AT&T asserts that for these accounts Southwestern's manual states that the costs will be directly assigned if the plant can be identified as dedicated, but the manual does not specify the procedures to be followed if the plant cannot be so identified.[82] Southwestern responds that its manual assigns the unidentifiable analog and digital costs to the cost pools COE-12 and COE-13, respectively. The unidentifiable Radio Systems costs will be assigned to regulated because those costs are dedicated to regulated products and services.[83] We find that while Southwestern's manual does describe how the cost pools will be allocated, these accounts represent another example of the considerable crossreferencing required to ascertain the allocation methodology. In order to determine the methodology for these accounts, the user must reference three separate tables within the manual, the "Cost Pools Matrix," "cost pool description" and "cost pool identification and assignment basis." As we have previously discussed, Southwestern can remedy this problem by including in the "Cost Pools Matrix" the cost pool description and the cost pool identification and assignment basis. Futhermore, we have found additional ambiguity in Southwestern's description of the cost pool apportionment process. Southwestern has provided at least three explanations of how its cost pools are developed. One explanation, provided in its Reply, is that all investment that cannot be directly assigned is included in a "common investment" pool. In the comments on its "Cost Pool Matrix," however, Southwestern provides two different, and possibly inconsistent, explanations. According to the comments, investment is assigned to pools based on "ratios developed using an engineering/costing model with specific usage characteristics," or "on the basis of switching and circuit investment distribution by study area." Neither of these latter two methods are explained. In revising its manual, Southwest-

ern must clearly state what the cost pool apportionment basis is for each account and eliminate this type of ambiguity. Whenever "studies," "ratios," of "models," are used to apportion costs into pools, Southwestern must explain these methods in sufficient detail so that we can determine their reasonableness.

70. In the case of radio systems, we find that Southwestern's proposed allocation methods are unclear. Southwestern's manual identifies three different allocation devices for investment that is not directly assigned - inter-office minutes, operator work time, and associated hard-wired equipment. We have previously discussed the need for Southwestern to explain these allocators. Also, we have previously stated, we believe that these allocators are intended for use in allocating shared investment that does not yet exist. We require Southwestern to amend its treatment of this account to align with its current nonregulated offerings and explain its allocation methods in detail.[84]

71. AT&T also argues that the cost allocation proposal for portions of central office investment will result in misallocation of costs. AT&T states that Southwestern has assigned the costs of storing information for the central control processor and other central office functions based on the forecasted number of "central office lines." AT&T argues that if "central office lines" includes private lines that are not switched, costs will be misassigned.[85] Southwestern responds that private lines are not included in the allocator, and defends its use of lines as an allocation basis. Southwestern argues that regulated and nonregulated use of the switch does not differ on a per access line basis.[86] We believe this allocation issue is best resolved by amending the manual to conform with Southwestern's current nonregulated activities. Southwestern must amend its manual accordingly.

Account 2311-Station Apparatus

72. Southwestern directly assigns the investment in this account to its regulated and nonregulated operations. However, the accounting treatment of station apparatus is extremely complex due to the Commission's decisions in its *Computer II Implementation* proceeding[87] and its *BOC CPE Relief Order*, [88] and the various options open to carriers in the provision of station apparatus as a result of these decisions. Southwestern is therefore required to explain in the comment section of its table what it will be including in this account for station apparatus, and to distinguish between investment that will be assigned to regulated from that which is assigned to nonregulated.

Account 2362-Other Terminal Equipment

73. Southwestern states the "DDS" cost pool will be separated using special studies, but provides no information on how those special studies will be conducted. Southwestern is required to provide a description of these special studies so that we may determine their validity and reliability.

Cable and Wire Facilities-Accounts 2411, 2421, 2422, 2423, 2424 and 2441

74. Southwestern apportions "common investment" cost pools within these accounts based on forecasted minutes of use. AT&T states that outside plant costs increase as distance increases, and that the allocator should be distance sensitive as well as usage sensitive in order to properly reflect cost causation.[89] In reply, Southwestern argues that the extra cost associated with obtaining nonregulated conversation-minute-miles for specific services would be burdensome. Southwestern further states that at the present time there is no basis for assuming that the relative distances of outside plant used for regulated and nonregulated services differ in material respects.[90] Any nonregulated service that Southwestern provides utilizing cable and wire facilities would be assigned to regulated operations, and if applicable taken under tariff rates. Southwestern is required to amend its manual to reflect its current nonregulated activities that share network plant. We, therefore, have no need to resolve this hypothetical allocation issue. In the future, if a shared use of outside plant develops, Southwestern will be required to amend its manual to provide for a forecasted measurement of use of the investment.

Account 2681-Capital Leases

75. Southwestern establishes one cost pool for this account. According to Southwestern's manual, the costs in this pool will be directly assigned if possible, and the remainder will be considered common investment. It is not clear from Southwestern's manual what allocation method is proposed for "common" capital leases. In amendments to its manual, Southwestern must specify how these costs will be allocated.

Account 2690-Intangibles

76. Southwestern proposes to assign all costs in this account to regulated activities. AT&T correctly asserts that Southwestern doe not allocate any of these costs to nonregulated services.[91] Southwestern replies that the manual will be revised to include allocation to nonregulated services.[92] We have no objection to the amendment filed by Southwestern.

Accounts 3100, 3400, 3410, 3420, 3500 and 3600-Accumlated Depreciation and Amortization

77. Southwestern did not establish any allocation of these accounts. As AT&T observes, because Southwestern's manual recognizes that a portion of the related asset accounts should be assigned to nonregulated, a proportionate amount of the associated depreciation and amortization reserves should be allocated as well.[93] Southwestern stated that it will revise its manual to allocate these accounts based on the assignment of the related asset account.[94] While we have no objection to these changes, we require Southwestern to amend further its treatment of Account 3100. The Commission stated in the *Joint Cost Order* that depreciation reserve accounts must be maintained at a level of specificity equal to that of the USOA accounts.[95] Southwestern must therefore amend its manual to allocate Account 3100 costs on an investment-account-by-investment-account basis.

Account 6121-Land and Building Expense

78. Southwestern proposes that this account be allocated to regulated and nonregulated activities based on the relative nonregulated wages and salaries if no other basis is available. AT&T argues that for equipment and other non-administrative buildings, there is little relationship between the wages and salaries of employees who occupy buildings and the related building expense. AT&T states that a more cost causative approach would be to allocate land and building expense on the same basis as the alloca-

tion of the corresponding investment in the land and buildings.[96] Southwestern responds that, contrary to AT&T's reading of its manual, all land and building expense associated with common network and outside plant investment will be allocated based on the associated use of that investment. The remaining expense, associated with non-network land and buildings, is allocated pursuant to wages and salaries.[97] While we do not object to Southwestern's allocation method, as stated in its reply, we have been unable to discern from the manual that this is in fact the allocation method proposed. Our reading of the manual led us to exactly the same interpretation as AT&T - that the expenses in this account would be allocated based on wages and salaries. We therefore direct Southwestern to amend its manual to clarify its cost apportionment basis.[98] Furthermore, we believe that the creation of a cost pool that contains rent expense, and that is allocated based on the relative use of the rented space, would produce a more cost-causative result. We require Southwestern to create such a pool or justify in amendments to its manual why no such pool should be required.

Account 6124-General Purpose Computer Expense

79. Although Southwestern includes this account in its "Cost Pool Matrix," it fails to describe an allocation for the account. Southwestern labels the account an "investment-related common expense" and links it to cost pool "IRC-09." In the list of cost pools provided by Southwestern," "IRC-09" merely described the costs included in the account. While Southwestern elsewhere indicates that the cost pool might be allocated based on "relative nonregulated wages and salaries, no where does the manual provide a definitive allocation. Southwestern is directed to amend its manual accordingly.

Account 6311-Station Apparatus Expense

80. Southwestern proposes to assigned all of the costs in this account to regulated activities, although the costs in the related investment account are directly assigned to both regulated and nonregulated activities. We find it difficult to believe that none of the expense for station apparatus is associated with nonregulated, given the proposed treatment of the related account. We require Southwestern to amend its manual or justify its proposal.

Account 6362-Other Terminal Equipment Expense

81. Southwestern provides for numerous cost pools in this account. One pool, for "CPE Repair -IPW - Trouble Isolation and Travel-Time Sensitive Charge" contains costs associated with an installer's travel to a customer's premises and the "trouble isolation efforts" the installer performs. The costs apportioned to the pools are assigned 50 percent to nonregulated. AT&T argues that an even split of costs is arbitrary.[99] Southwestern responds that its allocation method is logical because the installer is checking both the network lines and nonregulated premises wiring for failure.[100] Southwestern's allocation method, given that it affects only one cost pool in a large account, is reasonable, and we will not require an amendment of its methodology.

Account 6531-Power Expense

82. Southwestern appears to be providing inconsistent bases for the allocation of power expense. In its comments to its "Cost Pool Matrix," Southwestern states that the costs are allocated on the basis of the "combined investment distribution" of several of its network plant accounts. However, Southestern also lists a cost pool code, "IRC-36," that states that costs will be "assigned" based on actual use of central office switching. Southwestern must provide for a single, unambiguous method of allocating this account.

Account 6532-Network Administration Expense

83. Southwestern proposes to apportion this account into numerous cost pools and allocate cost to regulated and nonregulated activities based on factors such as intraoffice minutes, interoffice minutes, central office lines, etc. One of the pools provided is for videotext network administration and circuit provisioning. The costs for this pool is directly assigned to nonregulated activities. Southwestern, however, did not include videotext service in the nonregulated activities section of the manual. Southwestern is directed to amend its manual to provide a description of this service or to amend its cost table to assign the costs to regulated activities.

Accounts 6534-Plant Operations Administration Expense, Account 6535-Engineering Expense, Account 6561-Depreciation Expense-Telecommunications Plant in Service, Account 6564-Amortization Expense-Intangible, and Account 6565-Amortization Expense-Other

84. AT&T states that Southwestern should be required to use an allocation method other than the general allocator to allocate these accounts.[101] Southwestern argues in its reply that Account 6534 is not entirely assigned by the general allocator, as AT&T suggests. Southwestern states that only the residual amount remaining in the account after indirect and supervision expenses are cleared by hourly direct labor rates, are assigned by the general allocator.[102] First, Southwestern must explain its clearing process in more detail. We need to understand what costs are being cleared from the account and where those costs are going. Second, we believe that a more cost causative method exists to allocate the residual in this account, such as basing the allocation on the network investment-related expense accounts. We require Southwestern to amend its allocation methodology or to justify in detail why it must rely on the general allocator.

85. Furthermore, Southwestern chose to allocate Account 6535 by the general allocator because this expense is not directly reportable to the undertaking of a project. We concur with AT&T that since this account is related specifically to the assets it supports, Southwestern is required to allocate Account 6535 based on the same proportion of the combined assets that the enginering expense supports.

86. Southwestern also disputes AT&T's contention that Account 6561 is assigned via the general allocator. Southwestern indicates that only Embedded Inside Wire and Aerial Wire depreciation expense is allocated via the general allocator, but it does not explain why these two depreciation expense costs require the general allocator. The remaining depreciation expense is allocated in the same fashion as the related investment, Southwestern states.[103] While we agree with Southwestern that only a small portion of Account 6561 is allocated by the general allocator, we do not understand and why Embedded Inside Wire and Aerial Wire are allocated via the general allocator. Southwestern is required to allocate these accounts in the same manner as the related investment account. Furthermore, consistent with the Commission's

determination that the depreciation reserve should be allocated on an investment-account-by-investment-account basis, we require Southwestern to amend its manual to allocate depreciation expense in the identical manner. Each investment account must therefore be represented with its own unique cost pool.

87. For Account 6564, Southwestern agrees with the AT&T suggestion to revise the treatment of intangible amortization expense to be allocated on the basis of Account 2690, Intangibles.[104] Southwestern did not respond to AT&T's comment regarding Account 6565, Amortization Expense-Other, that Southwestern proposes to allocate with the general allocator. We believe that a more cost causative allocation mechanism exists, such as an analysis of specific entries in the account. We direct Southwestern to amend its manual accordingly to provide for a more cost causative methodology.

Account 6540-Access Expense

88. Southwestern includes the "Interstate Billing and Collection Expense" and "Intrastate Billing and Collection Expense" cost pools in this account. The revised USOA requires that this expense be included in Account 6623, Customer Services. Southwestern is directed to amend its manual accordingly. Furthermore, Southwestern is directed to change its apportionment of "Interstate Billing and Collection Expense" to assign it directly to regulated operations. Although the Commission has deregulated interstaate billing and collection, it specifically required this service to be accounted for as regulated.[105]

Account 6611-Product Management

89. Southwestern establishes several cost pools in this account. One pool is for "administrative support for product management" and is allocated based on "total accounts." AT&T argues that allocating costs based on customer accounts measures successful marketing efforts only, and therefore does not measure the relative regulated and nonregulated costs incurred to support the product management organization. AT&T recommends that Southwestern employ a more cost causative allocation based on the directly assigned costs of the product management activities supported.[106] In its reply, Southwestern agrees with AT&T's suggestion and states that it will change the manual accordingly.[107] We direct Southwestern to make the necessary amendment when it files its revised manual pursuant to this Order.

Account 6613-Product Advertising

90. Southwestern has created numerous cost pools, by advertising type, for this account. Southwestern indicated that for one of the cost pools, "general advertising of network and nonnetwork services," all costs will be assigned to regulated activities. We disagree with the proposed allocation. This cost pool includes costs that are of a general nature (not product specific), that benefit both regulated and nonregulated products. We require Southwestern to amend its manual accordingly.

Account 6621-Call Completion Services

91. Southwestern establishes eight cost pools in this account. Three pools relate to general operator services and are allocated based on a ratio of intra-LATA toll minutes to total toll minutes. A fourth pool, that also includes general operator expenses, is allocated based on a ratio of inter-LATA toll minutes to total toll minutes.

92. AT&T states that Southwestern's allocation of "general operator services" contained in this account has no basis because all toll messages are regulated and the relative intra-LATA or inter-LATA use of the network bears no relationship to the instances in which call completion services might benefit a nonregulated activity. AT&T recommends that the account be allocated based on measures of the specific regulated and nonregulated work functions performed, such as an analysis of the origins of the costs.[108] Southwestern did not specifically address AT&T's concern regarding this account, although in response to criticisms of another account - Account 6622, Number Services -Southwestern proposes to employ only one ratio - interLATA toll messages to total toll messages.[109] We do not understand Southwestern's proposed allocation methodology. We direct Southwestern to assign these expenses to regulated activities unless it can demonstrate a shared use of the underlying investment.

Account 6622-Number Services

93. As stated above, Southwestern proposes to allocate the "Operator Services - Support Costs" cost pool based on the percentage of interLATA toll messages to total toll messages. AT&T opposed this proposal and recommended allocation based on weighted operator work seconds.[110] Southwestern agrees with AT&T's suggestion and has submitted a revision to its manual.[111] We do not understand why all of these costs are not simply assigned to regulated. We direct Southwestern to amend its manual to reflect current nonregulated activities.

Account 6623-Customer Services

94. Southwestern proposes to apportion this account into numerous cost pools. The pools are either directly assigned to regulated or nonregulated costs or allocated based on a variety of mechanisms. AT&T asserts that the cost of many of the service center operations pools in Account 6623 are apportioned based on Universal Service Order Codes and that an allocation based on these codes is not a sound measure of the relative regulated and nonregulated activity in a service center. AT&T states that the work effort incurred to process service orders depends not just on the number of different regulated and nonregulated services, but also the frequency with which each is ordered. AT&T recommends that service center costs should be allocated based on measures of the proportion of regulated and nonregulated service orders, while billing inquiry costs should be allocated based on measures of the number of regulated and nonregulated inquiries. AT&T also argues that the same flaw can be found in Southwestern's allocation of billing inquiry and payment and collection costs for interexchange carrier access, based on service orders, as well as for other cost pools within the account.[112] Southwestern counters that AT&T's arguments are unwarranted. Southwestern states that any one service order could contain work requests for multiple products, *i.e.*, both regulated and nonregulated. Southwestern states that its proposed method of allocating these costs based upon the nature of the services ordered as reflected by Uniform Service Order Codes contains a greater level of detail and precision than the count of service orders rec-

ommended by AT&T. Southwestern also argues that AT&T's methods would require it to create additional cost pools in this already intricate account.[113]

95. We have already addressed this account as an example of unnecessary dissagregation of cost pools. In our previous discussion, we required Southwestern to explain why certain cost pools cannot be combined when all cost pool characteristics are identical and the only distinction shown in the manual is the use of internal accounting codes. As we understand Southwestern's proposal, the cost allocation of several types of customer services costs would be based on the relative number of regulated and nonregulated services that Southwestern offers and that are assigned their own unique service order code. This appears to be an insufficient indicator of cost causation, because expenses in this account appear to be driven by the number of orders placed, not the number of services offered. We direct Southwestern to amend its manual to provide a more cost causative basis of allocating customer service enter expenses. We also direct Southwestern to explain why it treats customer services expenses associated with Videotext services as nonregulated.

Accounts 6711, 6712, and 6721-Executive, Planning, and Accounting and Finance

96. Southwestern is allocating the cost pools in these accounts almost entirely on the general allocator. Only in the case of accounting expenses for nonregulated activities does Southwestern directly assign costs. We think it is unreasonable to assert that there are no directly assignable or directly/indirectly attributable expenses in any of these accounts. We require Southwestern to attempt to assign or attribute some of the amounts in these accounts before using the general allocator. If Southwestern cannot assign or attribute any, it should explain why more direct measures of cost are not feasible.

Account 6722-External Relations

97. Southwestern establishes a number of cost pools in this account, including two pools that include advertising costs. The general allocator is used for the advertising pools. AT&T asserts that Southwestern should have used the marketing allocator to allocate advertising costs, as required by the *Joint Cost Order*. [114] Southwestern agrees with AT&T's contention and states that it will revise the allocator for the "Informational Advertising" and "Corporate Advertising" cost pools to employ a marketing allocator.[115]

98. We are not convinced that Southwestern's description of its revised allocator as a "marketing allocator" is consistent with the Commission's rules. In amendments to its manual submitted with its reply, Southwestern states that it will allocate advertising costs on the basis of allocation code "MKT-03." The definition of this methodology states that the allocation will be based on "the directly assigned costs of the product management activities." The *Joint Cost Order* clearly provides that the marketing allocator is the ratio of all regulated and nonregulated marketing expenses either directly assigned or attributed. While we have no objection to Southwestern's attribution method for its image advertising costs, we believe that Southwestern must justify its use of the general allocator for several of the other cost pools in this account. We believe more cost causative allocation methods may exist for them, as well.

Account 6723-Human Resources

99. Southwestern uses the general allocator to apportion its one cost pool in this account. We believe a better allocation basis is salaries and wages. The explanation of the costs included in the account only further convince us that a relationship exists between wages and salaries and the amounts Southwestern classifies in this account.[116] We therefore require Southwestern to allocate this cost pool between regulated and nonregulated based on salaries and wages or to provide another cost causative allocation method.

Account 6724-Information Management

100. Southwestern allocates the cost pool in this account based on the general allocator. We again find that relationships between this account and other allocation bases should enable Southwestern to assign or attribute some of this account before applying the general allocator. One possible allocation basis is to allocate costs based on investment-related expenses. We require Southwestern to revise its allocation method in this account.

Account 6725-Legal

101. Southwestern allocates the entire account based on the general allocator. We believe that some of the amounts in this account can be directly assigned to either regulated and nonregulated activities. In addition, we believe that a more cost-causative method for allocating overhead expenses exists. We therefore require Southwestern to employ time and expense reporting to directly assign amounts in this account whenever possible, and to assign overhead expenses, such as support staff or a law library, based on the proportion of directly assigned costs. Any residual amount can be allocated with the general allocator.

Account 6726-Procurement

102. Southwestern proposes to allocate its procurement expenses based on the general allocator. We believe more direct methods of allocation exist. We therefore direct Southwestern to employ a move direct method. In reviewing possible methods, Southwestern should consider time reporting by procurement personnel.

Account 6727-Research and Development

103. AT&T contends that Southwestern assigns this account entirely to regulated services.[117] Southwestern states that its manual segregates this account into regulated and nonregulated cost pools by direct time reporting.[118] While we agree that Southwestern has provided an allocation of cost to nonregulated activities, we have two further questions about this account. First, it is not apparent from the manual that time reporting is the basis for the assignment of cost between regulated and nonregulated activities. Second, we do not understand how all research and development costs can be categorized as exclusively regulated or nonregulated. In its refiled manual, Southwestern must amend its treatment of this account to address these concerns.

Account 6728-Other General and Administrative Expenses

104. Southwestern has allocated this account entirely on the general allocator. In addition to the problems we discussed earlier concerning official communications, Southwestern must provide more cost-causative allocation methods for this account.

Account 6790-Provision for Uncollectible Notes Receivable Expense

105. Southwestern allocates the expense in this account based on the general allocator. We direct Southwestern to justify its use of the general allocator and to consider alternative allocation methods.

Account 7110-Income from Custom Work and Account 7130-Return from Nonregulated Use of Regulated Facilities

106. Southwestern's proposal for these accounts is unclear. Southwestern only describes in the comments column of its "Cost Pool Matrix" that both of these accounts constitute "Income account, revenues and expenses previously assigned." Southwestern is directed to provide further detailed explanation regarding how these accounts will be allocated.

Account 7150-Gains or Losses from Disposition of Land and Artworks

107. Southwestern assigns this account solely to regulated services. Since both Account 2111 - Land and Account 2122 - Furniture (including artworks) are allocated to both regulated and nonregulated activities, this account should be allocated as well. Therefore, we direct Southwestern to allocate this account based on an analysis of specific entries.

Account 7220-Operating Federal Income Taxes, Account 7230-Operating State and Local Income Taxes, and Account 7250-Provision for Deferred Operating Taxes-Net.

108. Southwestern has provided different allocation mechanisms for these accounts. For the two current income tax accounts, Southwestern states that the amount assigned to nonregulated activities will be identified based on "the ratio of nonregulated pre-tax income to total pre-tax income." For the current deferred tax account, the allocation is based on the "appropriate NAF" or "appropriate tax factors." We find these methods to be inadequate and inconsistent.

109. In determining the allocation of current and deferred taxes, Southwestern must provide for identical allocation treatment. Both Accounts 7220 and 7230 specify that "[n]o entries shall be made to this account to reflect interperiod tax allocations." The entries involving interperiod allocations are reflected in Account 7250. As such, applying different apportionment bases to any one group of these accounts than is applied to all three accounts could result in improper assignments of these costs to regulated and nonregulated activities. We believe that since under the revised USOA, interperiod tax allocations are used for accounting purposes, the net book taxes resulting from Accounts 7220, 7230 and 7250 should reflect normalized taxes based on book income.[119] Thus, if all three of these accounts are apportioned based on book income, the taxes apportioned should result in an appropriate distribution between regulated and nonregulated activities. We direct Southwestern to amend its manual for these accounts consistent with this Order.

Account 7240-Operating Other Taxes

110. Southwestern divides this account into two pools, one for property taxes and one for "other." Southwestern states that it will allocate the "other" cost pool based on an "appropriate" allocation methodology. Southwestern is directed to be more specific regarding the allocation of this account by indicating exactly what allocation methodology will be used for each type of tax.

Account 7340-Allowance for Funds Used During Construction

111. AT&T questions the assignment of this account entirely to regulated, since Southwestern's proposed apportionment of Account 2004 (Telecommunications Plant Under Construction-Long Term) benefits both regulated and nonregulated activities.[120] Southwestern agrees with AT&T's contention and states it will revise the manual to allocate this account based on the corresponding investment in Account 2004.[121] We find this change to be acceptable.

Account 7370-Special Charges

112. Southwestern allocates the entire account pursuant to the general allocator. In its revised manual to be submitted, Southwestern must provide for a cost pool that isolates the cost of its charitable contributions.

Account 7520-Interest Expense-Capital Leases

113. Southwestern proposes to allocate this account using the general allocator. AT&T suggests that a more cost causative method of allocating this account would be on the basis of the relative costs of the capital leases (Account 2681).[122] Southwestern agrees and will revise the manual accordingly.[123] We have no objection to the revisions.

Account 7610, 7620, 7630, and 7640-Extraordinary Items

114. Southwestern did not provide an allocator for these accounts. Southwestern is directed to allocate these accounts based on review of individual entries in the accounts.

IV. PROCEDURAL ISSUES

115. In this section we address a number of procedural issues affecting the manuals. These issues are: (a) the submission of revised manuals in compliance with this order; (b) interim reporting and retention requirements; and (c) the routine submission of future amendments to the manuals.

116. *Revised manuals.* We have required Southwestern to submit extensive amendments clarifying and changing many of its cost pool apportionment and cost allocation procedures. We have also directed Southwestern to submit additional information concerning its affiliate transactions, list of nonregulated activities, incidental activities, and time reporting mechanisms. In many cases, the additional information requested is needed to form a judgment concerning the reasonableness of Southwestern's proposed

methods. In the *Joint Cost Order*, the Commission specifically provided for public comment on the manuals so that determination on their compliance with Commission requirements would be based on a full record.[124] Similarly, we believe that our review of Southwestern's amendments will be aided by public comment on the revision. Public comment on the revisions fulfills the *Joint Cost Order's* promise that the cost allocation methodologies would be exposed to public scrutiny prior to their implementation.[125]

117. We will evaluate the proposed revisions, as well as the comments that we receive, before issuing an order approving or disapproving the amendments. If we disapprove a proposed revision, we shall take whatever further action is required, including mandating specific allocation methodologies or other procedures, consistent with our delegated authority to implement the manuals. All revisions that are approved or ordered shall be made retroactive to January 1, 1988. In addition, to facilitate our handling of manuals and the availability of updated manuals to the public, Southwestern must file two updated copies of its revised manual with the Commission in looseleaf form with numbered and dated pages, within 60 days of the release date of this Order.[126] When amendments are submitted, each revised page must clearly indicate the word "REVISED" and the date next to the page number. All amended language must be indicated by a verticle line in the right margin of the page.

118. *Interim reporting and record retention.* The *Joint Cost Order* directed us to develop interim reporting and record retention requirements, pending the final resolution of these issues in the *Automated Reporting Requirements* docket.[127] In that proceeding, the Commission delegated to us the authority to determine the parameters of the data to be filed concerning the separation of joint and common costs.[128] The Commission also specified that the first report containing the results of the implementation of the cost manuals would be filed on June 1, 1988, covering the period of January 1, 1988 to March 31, 1988. The Commission directed us to finalize our reporting standards prior to that date. Given that reporting will begin five months after the implementation of this manual, we decline to issue interim reporting formats. We believe our resources are better devoted to assuring that the permanent reporting requirements, scheduled to become effective on June 1, 1988, are properly designed and implemented. Moreover, although we will have to wait five months to see the first set of results from the companies, any misallocations that may be detected can be corrected at that time.

119. We require that carriers on an interim basis retain all of their accounting records together with any calculations necessary to perform cost allocations, that will be necessary to report cost allocations to the Commission. For the interim, records must be maintained at a cost pool level.

120. *Routine amendments.* In addition to reporting and recordkeeping requirements, the larger issue of the procedures the companies shall be required to follow when updating their cost allocation manuals must be addressed. In determining how frequently updates to cost manuals should be submitted, we recognize that the accuracy of different sections of the manual will have different effects on our ability to monitor the cost allocation process. For example, it is very important for the Commission to obtain current information on the cost categories and how these are allocated between regulated and nonregulated activities. Other information, such as corporate structure, may not be quite as critical for cost allocation monitoring purposes. Furthermore, some of the information required is intended for our informational purposes so that we understand the carriers' activities, while other information in the manuals must be reviewed prior to implementation.

121. Based on an analysis of these factors, we have decided to adopt the following requirements for the update of manuals.[129] First, several categories of information require our attention before the manual is implemented. These are: (1) changes to the cost categories and their allocation mechanisms; and (2) a change in the way employee time, including nonproductive time, is allocated. Each of these changes in the cost manuals must be submitted at least 60 days prior to implementation. Parties seeking to comment on the proposed amendments will be provided an opportunity to do so prior to implementation and will be notified by public notice of the comment dates. The proposed amendments to the manual will be deemed accepted unless the Common Carrier Bureau, pursuant to its delegated authority, stays the effectiveness of the change or rejects the change.[130]

122. Second, we will require that Southwestern file any changes to its corporate structure in a timely manner.[131] A modification to a carrier's cost manual to reflect a corporate reorganization does not require our advance approval and, therefore, does not need to be filed prior to the corporate restructuring. Finally, all other changes to the manual should be submitted quarterly, on March 31, June 30, September 30 and December 31 of each year.

123. We believe that these procedures will ensure that the ongoing process of implementing cost allocations will continue to be conducted according to the requirements set forth in the *Joint Cost Order*. At the same time, it also minimizes the number of times Southwestern must seek prior Commission approval before implementing a change and provides a system which requires Commission action within a relatively short time frame.

V. ORDERING CLAUSES

124. ACCORDINGLY, IT IS ORDERED that the Cost Allocation Manual filed by Southwestern, File Number AAD 7-1694, IS APPROVED, subject to the conditions noted in this Order.

125. IT IS FURTHER ORDERED that this Order shall become effective January 1, 1988.

126. IT IS FURTHER ORDERED that revised copies of the Cost Allocation Manual should be submitted within 60 days from the release date of this Order.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] Southwestern is composed of the following local exchange carriers: Southwestern Bell Telephone Company of Arkansas; Arkansas Bell Telephone Company; Southwestern Bell Telephone Company (of Oklahoma); Oklahoma Bell Telephone Company; Kansas Bell Telephone company; Missouri Bell Telephone Company; and Texas Bell Telephone Company.

[2] Separation of costs of regulated telephone service from costs of nonregulated activities, *Report and Order*, CC Docket 86-111, 2 FCC Rcd 1298 (1987)(*Joint Cost Order*), *modified on recon.*, 2 FCC Rcd 6283 (1987) (*Reconsideration Order*), *petitions for further recon. pending.*

[3] 51 Fed. Reg. 43498 (Dec. 2, 1986), *to be codified at* 47 C.F.R. Part 32.

[4] The commenting parties are: American Telephone and Telegraph Company (AT&T); International Business Machines Corporation (IBM); MCI Telecommunications Corporation (MCI); and the Western Union Telegraph Company (Western Union).

[5] Pursuant to the *Joint Cost Order*, the Commission originally contemplated approving the BOCs' permanent, or "Part 32," manuals by Bureau order only if the permanent manuals differed materially from the interim, or "Part 31, manuals filed by the BOCs. *Joint Cost Order* at 1328. Since Bureau action on the Part 31 manuals remains pending, we will issue orders on each of the BOCs' Part 32 manuals.

[6] *Joint Cost Order* at 1328. The *Joint Cost Order* uses the term "cost categories" to describe groupings of costs that are homogenous in nature for cost allocation purposes. The accounting profession's term for "cost categories" is "cost pools." We will use the two terms interchangeably in this Order.

[7] *Joint Cost Order* at 1321-22.

[8] *Id.* at 1319.

[9] MCI Comments at 1-5.

[10] Southwestern Reply at 9-12.

[11] If the additional material we are requesting does not permit us to determine whether of the cost apportionment or cost allocation methods meet Commission requirements, we will order Southwestern to adopt a methodology of our own choosing, pursuant to our delegated authority to implement the manuals.

[12] *Joint Cost Order* at 1334-1337 and *Reconsideration Order* at 6295, 6297.

[13] *Joint Cost Order* at 1345, *amended by Reconsideration Order* at Appendix C.

[14] We use the term "prevailing price," in lieu of the term "market rate" that appears in the Commission's rules, to make clear that the service being provided must be made available by the carrier or the affiliate to third parties generally. Use of the term "market rate" might be misinterpreted as implying that the cost of a service could be established by reference to a market price even when the carrier or affiliate does not itself make the service available to the public, a result expressly rejected in the *Reconsideration Order*. *Reconsideration Order* at 6217.

[15] *Joint Cost Order* at 1343, *amended by Reconsideration Order* at Appendix B.

[16] *Joint Cost Order* at 1328.

[17] Southwestern Manual at Section 3, Page 1.

[18] In the *Ameritech Order*, we examined the arguments for and against treating Bellcore as an affiliate, including the arguments raised in the Bell Atlantic manual proceeding. *Ameritech Permanent Cost Allocation Manual Order*, DA 87-1886, adopted December 28, 1987 at paras. 11-14. In *Ameritech*, we determined that Bellcore would be treated as an affiliate of all the BOCs. Southwestern must therefore amend its manual to include Bellcore as an affiliate.

[19] We also are concerned about Southwestern's treatment of official communications, a service Southwestern states that it provides to affiliates. Because official communications also involves nonregulated activities, we will discuss it *infra* at paras. 55-57.

[20] *Joint Cost Order* at 1328.

[21] In doing so, Southwestern must provide sufficient information to permit us to make a judgment that the activity is an *outgrowth* of a regulated activity *and* not a separate line of business.

[22] *Joint Cost Order* at 1321-22.

[23] Southwestern Manual at Section 4.

[24] Southwestern Manual at Section 4, page 6.

[25] *Joint Cost Order* at 1318.

[26] Western Union specifically refers to Southwestern's treatment of official communications services, which we have discussed, *infra* at paras. 55-57.

[27] Western Union Comments at 3-4.

[28] Southwestern Reply at 5-6 *citing* Southwestern Manual at Section 1, page 6.

[29] Western Union also objects to permitting carriers to allocate the costs of jointly-used central office equipment and outside plant. Western Union argues that by permitting an allocation of cost, rather than requiring a tariffed charge, the Commission is opening the door to discriminatory pricing of carrier facilities. Western Union's objection was dismissed in the *Reconsideration Order*. In that order, the Commission stated that carriers would be required to charge a tariffed rate for services provided to nonregulated activities whenever a tariffed rate exists. The implementation of *Computer III* will provide tariffed rates for individual service components that are not available on a discrete basis today. Western Union's concerns are therefore better addressed in the *Computer III* implementation proceeding. *See* Amendment of Sections 64.702 of the Commission's Rules and Regulations (*Third Computer Inquiry*), *Phase I Report and Order*, 104 FCC 2d 958 (1986), *modified on reconsideration* 2 FCC Rcd 3035 (1987), *Third Computer Inquiry*, *Phase II Order*, 2 FCC Rcd 3072 (1987).

[30] *Joint Cost Order* at 1319.

[31] *Reconsideration Order*, 2 FCC Rcd at 6288.

[32] Specific Showing for the Use of the NPI as the Appropriate Forecasting Period for Network Common Investment, Southwestern Manual at Appendix A.

[33] The comments were received after the Commission's adoption of the *Reconsideration Order* that reduced the forecast period to three years, but before that *Order's* release.

[34] IBM Comments at 1-6.

[35] MCI Comments at 9-11.

[36] Southwestern Reply at 2-6.

[37] *Reconsideration Order* at 6285 - 6288.

[38] *Reconsideration Order* at 6288.

[39] As we discuss *infra*, para. 41, Southwestern's nonregulated activities appear to require forecasting for a portion of only one account.

[40] *Petition for Waiver of Section 31. 2 - 20 (d) of the Commission's Rules to Permit the Expensing of Certain Plug - ins Costing $ 200 or Less*, 2 FCC Rcd 5896 (1987).

[41] CITE BELL ATLANTIC ORDER.

[42] *Joint Cost Order* at 1320.

[43] MCI Comments at 8-9.

[44] Southwestern Reply at 6-7.

[45] *Joint Cost Order* at 1320.

[46] Apportionment bases are provided for the common investment pools and the final common expense pools. The general overhead pool is allocated pursuant to the general allocator, as required by the Commission. The apportionment basis for the investment-related common expense pools are somewhat more complex, and are discussed *infra* at para. 42.

[47] Southwestern Manual at Section 6.

[48] MCI Comments at 5. MCI cites as an example the cost apportionment procedures for digital electronic switching. We have addressed MCI's specific comments on digital switching in the context of that account, *infra*.

[49] MCI Comments at 9.

[50] *Id.* at Section 6 at 3.

[51] We believe that Southwestern's use of the word "assigned" here does not mean direct assignment, but is used as a synonym for attribution.

[52] We also have not been able to determine how Southwestern proposes to use numeric designations of the cost pools to identify types of equipment.

[53] *Joint Cost Order* at 1320.

[54] Southwestern Manual at Section 6 at 91-99.

[55] Southwestern refers to the apportionment methods as "assignment" bases. Southwestern Manual at Section 6 at 3. We believe that use of the work "assignment" is misleading, as none of these bases appear to employ direct assignment.

[56] Southwestern Manual at Section 6 at 13.

[57] *Joint Cost Order* at 1320.

[58] *Id.*

[59] Southwestern Manual at Section 6 at 23.

[60] *Joint Cost Order* at 1324.

[61] In doing so we caution Southwestern to limit its use of the marketing allocator to a small percentage of its marketing costs. As in the case of the general allocator, the marketing allocator ratio is only meaningful if it represents a majority of total marketing expenses. *Cf.* Joint Cost Order at 1318. If we find that the marketing allocator is used to allocate a large percent of marketing expenses, we will require carriers to amend their cost allocation procedures to maximize direct assignment and attribution.

[62] Southwestern Manual at Section 6 at 31.

[63] Id. at Section 6 at 24 (emphasis supplied).

[64] Southwestern Manual at Section 6 at 4.

[65] Id. at Section 6 at 3.

[66] Joint Cost Order at 1328.

[67] Automated Reporting Requirements, 2 FCC Rcd 5770, 5775 (1987).

[68] These accounts will be included in future releases of Automated Reporting Systems reporting formats.

[69] *See* AT&T Comments at 2, n.**, and Bell Atlantic Reply at 3.

[70] In amending its manual, Southwestern must list all accounts required here or pursuant to be Automated Reporting Requirements proceeding. If it has no cost or revenue in the account, it should indicate that fact in its "Cost Pool Matrix.

[71] Joint Cost Order at 1318.

[72] Joint Cost Order at 1336.

[73] Southwestern Manual at Section 6 at 28.

[74] AT&T Comments at 5.

[75] Southwestern Reply at Appendix 1 at 3.

[76] Automated Reporting Requirements, *supra* note 67.

[77] AT&T Comments at 2.

[78] Southwestern Reply at Appendix 1, at 1.

[79] AT&T Comments at 5, n. *.

[80] Southwestern Reply at Appendix 1 at 3.

[81] AT&T Comments at 9-10, n.**. Southwestern does not respond to this comment.

[82] AT&T Comments at 5.

[83] Southwestern Reply at Appendix 1 at 3-4.

[84] Account 2223, Circuit Equipment, presents the same issues as does Account 2231. We also require Southwestern to amend its treatment of Account 2232 consistent with this Order.

[85] AT&T Comments at 6, n. **.

[86] Southwestern Reply at 8 and Appendix 1 at 4. Southwestern also states that the only current joint use of the central office involves protocol processing, and that the allocation of those costs is based on "kilocharacters.

[87] Procedures for Implementing the Detariffing of Customer Premises Equipment, CC Docket 81-893, 95 FCC 2d 1276 (1983), modified on reconsideration 50 Fed. Reg. 9016 (1985); Second Report and Order, 98 FCC 2d 814 (1984) (detariffing mobile CPE); Third Report and Order, 99 FCC 2d 354 (1984) (detariffing the independent local exchange carriers' state-tariffed CPE); Fourth Report and Order, 49 Fed. Reg. 47,265 (1984) (detariffing CPE owned by Western Union and the international record carriers); Fifth Report and Order, 49 Fed. Reg. 46,378 (1984) (addressing accounting procedures to be followed in detariffing CPE); Sixth Report and Order, 50 Fed. Reg. 1525 (1985) (establishing a framework for detariffing National Security and Emergency Preparedness (NSEP) CPE); and Seventh Report and Order, FCC 86-17, released January 23, 1986 (detariffing federally-tariffed CPE owned by the independents and NSEP CPE).

[88] BOC CPE Relief Order, 2 FCC Rcd 143 (1987), modified on recon. FCC 87-389, released December 17, 1987.

[89] AT&T Comments at 5-6.

[90] Southwestern Reply at Appendix at 2-3.

[91] Comments of AT&T at 3.

[92] Southwestern Reply at Appendix 1 at 2.

[93] AT&T Comments at 1-2, n. **.

[94] Southwestern Reply at Appendix 1 at 1.

[95] Joint Cost Order at 1325.

[96] AT&T Comments at 9.

[97] Southwestern Reply at Appendix 1 at 6.

[98] Accounts 6122 through 6124 contain the same flaw. Southwestern is directed to amend its manual for these accounts, as well.

[99] AT&T Comments at 7.

[100] Southwestern Reply at Appendix 1 at 4-5.

[101] AT&T Comment at 10-11.

[102] Southwestern Reply at Appendix 1, at 7.

[103] Southwestern Reply at Appendix 1, at 7.

[104] Southwestern Reply at Appendix 2, Section 6 at 75.

[105] Joint Cost Order at 1309.

[106] AT&T Comments at 10.

[107] Southwestern Reply at Appendix 1, at 6.

[108] AT&T Comments at 6-7.

[109] Southwestern Reply at Appendix 1 at 4.

[110] AT&T Comment at 6-7.

[111] Southwestern Reply at Appendix 1, at 4. The revision states that the allocation will be based on "operator work time," not "weighted operator work seconds," as AT&T proposed.

[112] AT&T Comments at 7-8.

[113] Southwestern Reply at Appendix 1, at 5.

[114] AT&T Comments at 12.

[115] Southwestern Reply at Appendix 1, at 7.

[116] Southwestern Manual at Section 6, at 107.

[117] AT&T Comments at 4.

[118] Southwestern Reply at Appendix 1, at 2.

[119] We further believe that book income should be operating book income before taxes and reduced by interest expense. Our proposed methodology ensures that the costs are being allocated correctly and in a straightforward manner, and also ensures that "operating book income" better reflects the cost that is being allocated -- income taxes.

[120] AT&T Comments at 2-3.

[121] Southwestern Reply at Appendix 1, at 1 and Section 6, at 123.

[122] AT&T Comments at 11-12.

[123] Southwestern Reply at Appendix 1, at 7.

[124] Revised manuals shall be served on all parties to the Southwestern manual proceeding.

[125] On November 20, 1987, Southwestern filed a letter notifying the Commission of its intention to provide customer premises equipment (CPE), in addition to the nonregulated activities listed in its manual. Southwestern stated in its letter that it would amend its manual to provide for CPE at the time the Commission completed its review of the manual. Any amendments made by Southwestern to accomodate its CPE activities shall also be subject to public comment.

[126] One copy will be made available in the Accounting and Audits Division reference room, while the other will be maintained for staff use.

[127] Joint Cost Order at para. 1328-29.

[128] Automated Reporting Requirements, *supra* at para. 46.

[129] We shall establish identical updating criteria for each of the BOCs. This action is consistent with the authority delegated by the Commission in the Joint Cost Order.

[130] A stay of the effectiveness of a proposed change to the manual shall not be for longer than 180 days.

[131] Of course, changes to corporate structure that also affect cost categories need to be filed in advance of implementation, as discussed *supra*.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

BellSouth Services Transmittal Nos. 114,
Tariff F.C.C. No. 1 122 and 124

ORDER

Adopted: January 21, 1988; Released: January 29, 1988

By the Deputy Chief, Common Carrier Bureau:

1. On August 24, 1987, BellSouth filed Transmittal No. 114. MCI filed a petition for rejection or suspension and investigation, to which BellSouth replied. On October 7, 1987, BellSouth filed Transmittal No. 122 to clarify Transmittal No. 114. MCI filed a petition to investigate, AT&T filed a petition for suspension and investigation, and BellSouth replied. On October 23, 1987, BellSouth filed Transmittal No. 124 to further revise its proposed tariff. MCI filed a petition to reject, to which BellSouth replied. That BellSouth tariff transmittal is currently scheduled to become effective on January 23, 1988.

2. BellSouth's Transmittal No. 114 provided that if a customer uses equipment installed prior to 1984 which is unable to receive equal access FGD signaling, traditional FGD signaling will be provided until the customer has made the technical changes necessary to receive equal access signaling or until January 1, 1989, whichever occurs earlier. BellSouth Description and Justification (D & J), Transmittal No. 114 at 1. BellSouth stated that if the customer is provided traditional FGD signaling in this manner, a billing factor is applied to adjust the measured minutes of use to compensate for the difference between equal access FGD signaling and traditional FGD signaling. *Id.* In Transmittal No. 122, BellSouth added language to describe the application of the factor and made certain other clarifications pursuant to a Bureau staff request. BellSouth did not specify the billing factor in Transmittal No. 114, but provided the billing factor methodology in Transmittal No. 122 and revised it in Transmittal No. 124.

3. MCI contends that the adjustment factor proposed by BellSouth is inaccurate in that BellSouth has ignored the fact that there is a pause between NPA-NXX and transmission of the final four digits. MCI Petition, Transmittal No. 122 at 10. In addition, using data from a Bell Labs study cited by BellSouth, MCI contends that the per-digit dialing time that BellSouth factors into its billing adjustment is too short. MCI Petition, Transmittal No. 124 at 2, 4-5. MCI also objects to the removal from the formula of "no response" abandons, which occur between dialing the final digit and receiving the acknowledgement "wink" from the interexchange carrier. MCI further submits that BellSouth should apply a completion ratio to the billing factor. MCI Petition, Transmittal No. 122 at 6-7.

4. AT&T generally opposes any billing factor. AT&T Petition at 7 & n.**. AT&T also complains that BellSouth's tariff support: (1) does not describe when or how its study was performed, (2) does not provide the detailed information required by the Commission's Rules, (3) contains data that is inconsistent with other information BellSouth has used, and (4) may be distorted because BellSouth's study improperly includes local calls. *Id.* at 3, 4 & n.*. AT&T further contends that the billing factor should not include "no response" calls, which occur after the customer has dialed all ten digits and hangs up for lack of response. *Id.* at 4-5. Finally, AT&T notes that it leases facilities from BellSouth in seven of the ten AT&T points of presence to which the tariff revisions would apply and that BellSouth has made no effort to upgrade these facilities to accept overlap outpulsing. *Id.* at 6 n.*.

5. BellSouth acknowledges that use of the Bell Labs study produces a different dialing time, but notes that the study was based on 1974 information, while BellSouth has used more recent data. BellSouth Reply, Transmittal No. 122 at 4, 5 & n.3. BellSouth maintains that the call set-up time between dialing of the final digit and receipt of the acknowledgement wink is so short that it would have no effect on the billing factor. BellSouth Reply, Transmittal No. 124 at 7. Additionally, it states that there is no proof that a pause occurs between NPA-NXX and XXXX, that most calls are not abandoned during the final four digits, and that a separate completion ratio is unnecessary, since its factor includes all calls which progress far enough to receive an acknowledgement wink, completed or not. BellSouth Reply, Transmittal No. 122 at 10, 12, 13-14.

6. BellSouth notes that although many of the switches used by AT&T are leased from BellSouth, those switches were designed by AT&T. BellSouth Reply, Transmittal No. 124 at 7. It argues that no proof has been offered that its study improperly included local calls. BellSouth Reply, Transmittal No. 122 at 12. However, BellSouth does agree with AT&T that "no response" calls after all digits are dialed should not be factored into the billing adjustment. *Id.* at 13. Similarly, BellSouth concedes that the formula should take into account only those partial dials and time-outs which occur during the final four digits. *Id.* at 12 n.6, 14. Consequently, it has revised its billing factor in Transmittal No. 124.

7. The Common Carrier Bureau has reviewed the tariff transmittals, the petitions and BellSouth's replies. We conclude that no compelling argument has been presented that the tariff proposal is patently unlawful so as to require rejection and that no question has been presented that would warrant investigation at this time.

8. IT IS THEREFORE ORDERED that the petitions against BellSouth Services Tariff F.C.C. No. 1, Transmittal Nos. 114, 122 and 124, filed by MCI Telecommunications Corporation and American Telephone and Telegraph Company, ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Carl D. Lawson
Deputy Chief, Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of the Application of

Sherry Rullman

For Authority to Construct and Operate a Multichannel Multipoint Distribution Service facility on F-group channels to serve the West Palm Beach, Florida Metropolitan Statistical Area (MSA)

File No. 12936-CM-P-83

MEMORANDUM OPINION AND ORDER

Adopted: December 15, 1987; Released: January 15, 1988

By the Chief, Domestic Facilities Division:

1. Microband Corporation of America (Microband) has filed a Petition to Deny, challenging the above-referenced application of Sherry Rullman (Rullman) to construct and operate a Multichannel Multipoint Distribution Service (MMDS) facility on the F-group channels to serve the West Palm Beach, Florida Metropolitan Statistical Area (MSA). Rullman's MMDS application was selected for qualification review as the result of the Commission's random selection process for the West Palm Beach MSA.[1]

2. Microband alleged in its Petition to Deny[2] that Rullman, along with eleven other MMDS applicants,[3] engaged in an orchestrated attempt to skew the Commission's lottery proceedings by the coordinated and systematic filing of virtually identical applications. Nine of these applicants[4] filed applications in the West Palm Beach MSA. Microband contends that the events leading up to the filing of these "cookie-cutter" applications, the familial or business relationships among certain applicants, the central role that, at least, two of the applicants played in the preparation of the applications, and the similarities in technical and other information among the applications should lead the Commission to conclude that Rullman failed to disclose the identity of the real-parties-in-interest to her application in violation of Section 21.13(a) of the Commission's Rules, 47 C.F.R. § 21.13(a). Microband claims further that the facts it cites show the parties filed multiple applications in violation of Section 21.901(d)(2) of the Commission's Rules, 47 C.F.R. § 21.901(d)(2), known as the one-to-a-market rule. Microband also contends that Rullman has not adequately demonstrated her financial qualifications to be an MMDS licensee in violation of Section 21.17 of the Commission's Rules, 47 C.F.R. § 21.17.

3. None of these allegations by Microband is unique to this particular proceeding concerning Rullman's application to construct and operate an MMDS facility at West Palm Beach, Florida. These allegations, as applied to Rullman, were considered and rejected by the Commission in *Sherry Rullman*, 2 FCC Rcd 2011 (1987). For the reasons provided in that decision, we deny Microband's Petition to Deny to the extent of the allegations concerning violations of the real-party-in-interest rule and the one-to-a-market rule.

4. With regard to Microband's allegation that Rullman failed to adequately demonstrate her financial qualifications pursuant to Section 21.17, we note that by the *Report and Order* in CC Docket 86-128, *Revision of Part 21 of the Commission's Rules*, 2 FCC Rcd 5713 (1987) (Report and Order), Section 21.17 was revised to allow new applicants to submit a financial certification of their ability to meet estimated construction costs and the expenses of operating for a period of one year. It should be emphasized that the financial certification requirement does not abrogate the requirement that an applicant must still demonstrate that it is financially qualified. However, the new Section 21.17 changes the manner in which such demonstration is made. Footnote 57 of *Report and Order* stated:

> As discussed in paragraph 37, pending applications that will be granted after the new rules become effective will be treated as though they had been filed under the new rules. For those applications already containing financial data demonstrating financial ability to construct and operate the proposed facility, we will treat that information as if it were a certification of financial ability under the new rules. Only those applicants whose applications are deficient with regard to this information, and thus subject to dismissal, need file a financial certification statement, as prescribed by the new rules.

Id. at 5752-53. Rullman has submitted a financial certification that satisfies the standard established in the Report and Order. Microband's arguments are rejected.

ORDERING CLAUSE

5. ACCORDINGLY, IT IS ORDERED that the Petition to Deny of Microband is hereby DENIED.

6. This order is issued pursuant Section 0.291 of the Commission's rules, 47 C.F.R. § 0.291, and is effective on its release date. Petitions for reconsideration pursuant to Section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, or applications for review pursuant to Section 1.115 of the Commission's rules, 47 C.F.R. § 1.115, may be filed within thirty (30) days of the date of public notice of this order. *See* Section 1.4(b)(2) of the Commission's rules, 47 C.F.R. § 1.4(b)(2).

FEDERAL COMMUNICATIONS COMMISSION

James R. Keegan, Chief
Domestic Facilities Division
Common Carrier Bureau

FOOTNOTES

[1] As the result of other random selections, Sherry Rullman's applications have been chosen for qualification review in the following additional markets: Boston, Massachusetts; Eureka, California; Key West, Florida; McGregor, Texas; Pocatello, Idaho; San Marcos, California; and Seattle, Washington.

[2] In its Petition to Deny, Microband incorporated by reference the petition to deny it filed in *Sherry Rullman*, 2 FCC Rcd 2011 (1987).

[3] The twelve applicants named by Microband are Sherry Rullman, Edna Cornaggia, Jack G. Hubbard, Warren Ache, Jody Barnes, Stephanie Engstrom, Thomas Glab, Joseph W. Hubbard, Theodore D. Little, Kevin Rullman, Steven Rullman and David Wiechman.

[4] Three of the twelve applicants named by Microband, Stephanie Engstrom, Theodore D. Little and Kevin Rullman, did not file applications to serve the West Palm Beach MSA.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

GTE Telephone
Operating Companies
Transmittal Nos. 311 and 359

Revisions to Tariff F.C.C. No. 1

ORDER

Adopted: January 20, 1988; Released: January 20, 1988

By the Deputy Chief, Common Carrier Bureau:

1. On October 9, 1987, the GTE Service Corporation and its affiliated domestic operating companies (the GTOCs) filed the captioned tariff revisions which are scheduled to become effective on January 21, 1988. The GTOCs propose to add Hawaii, Indiana and Michigan to the list of states with valid restrictions on the transmission of intrastate intraLATA WATS access traffic.

2. The Commission received petitions to reject from ALC Communications Corporation (ALC) and from MCI Telecommunications Corporation (MCI). ALC contends that the revisions constitute a refusal to deliver intraLATA traffic on WATS access lines to resale carriers in Michigan, and that this refusal contravenes state law. The GTOCs reply that they are not proposing to block access to valid resellers; they argue that access is allowed in accordance with valid state policies when the customer dials the reseller's access number. GTOC Reply at 5.

3. MCI argues that the revisions should be rejected because it is unclear that the state restrictions are "valid," and because the GTOCs have not sufficiently described how these revisions will affect their customers. MCI Petition at 2-3. MCI asserts that the GTOCs are violating Section 61.54(j) of the Commission's Rules, 47 C.F.R. § 61.54(j), by attempting to apply the unclear and indefinite terms and conditions of the state orders in the instant filing. *Id.* at 4. The GTOCs disagree with MCI that Section 61.54(j), which requires clarity in the tariff, requires that the GTOCs include detailed state information in the federal tariff. GTOC Reply at 3.

4. On January 19, 1988, the GTOCs submitted Transmittal No. 359, which gave details of the state restrictions. GTOC Tariff F.C.C. No. 1, Transmittal No. 359 (filed Jan. 19, 1988). The GTOCs stated that Hawaii authorized GTOC to block the completion of intrastate calls originating from interstate special access lines. *Id.* at 1st Revised Page 121.1.5. They further stated that Indiana and Michigan allow intrastate intraLATA communications to be placed only over facilities of a GTOC.

5. The Common Carrier Bureau has reviewed Transmittal Nos. 311 and 359, the petitions and the GTOCs' reply. We find that no compelling argument has been presented that the tariff revisions are patently unlawful so as to require rejection and that no question has been presented that would warrant investigation at this time.

6. Accordingly, IT IS ORDERED that the petitions of MCI Telecommunications Corporation and ALC Communications Corporation against GTE Telephone Operating Companies, Tariff F.C.C. No. 1, Transmittal No. 311, ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Carl D. Lawson
Deputy Chief, Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 88-1
Phase I

In the Matter of

Annual 1988 Access
Tariff Filings

ORDER

Adopted: January 21, 1988 ; Released: January 21, 1988

By the Deputy Chief, Common Carrier Bureau:

1. Western Union Corporation has filed a motion for extension of time to file an opposition to the direct cases submitted in the Annual 1988 Access Tariff Filings investigation, and requests that the local exchange carriers (LECs) be required to serve their filings by hand to the other parties in the proceeding. Western Union Motion (filed Jan. 19, 1988) at 1. In the Order designating issues for investigation, this Bureau allowed non-LEC parties 10 days in which to file oppositions to the LECs' direct cases or tariff filings. Annual 1988 Access Tariff Filings, CC Docket No. 88-1, Phase I, Designation Order, DA 88-16 (released Jan. 14, 1988) at para. 8.

2. Western Union argues that it cannot begin meaningful analysis until one week after the filing date because data must be keyed into its computers. Western Union Motion at 1. It asserts that if the 10-day deadline is maintained, this Bureau should direct the LECs to serve their direct cases and tariffs by hand to the other parties. *Id.* at 3.

3. Western Union has not shown sufficient cause for this Bureau to require the LECs to serve their direct cases and tariffs by hand to the other parties. We believe that it would be unnecessarily burdensome for us to impose such a requirement on the LECs. Because of the amount of time available for parties to review the LEC direct cases, we will make certain that copies of the LEC submissions are readily available to interested parties. These submissions will be available through the Tariff Division. We will address Western Union's request for an extension of time in a subsequent Order.

4. Accordingly, IT IS HEREBY ORDERED that the request of the Western Union Corporation regarding service by hand of direct cases in CC Docket No. 88-1, Phase I, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Carl D. Lawson
Deputy Chief, Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Transmittal Nos. 1069 and 1092
American Telephone and
Telegraph Company

Revisions to Tariff F.C.C. Nos. 7 and 10

ORDER

Adopted: December 29, 1987; Released: December 30, 1987

By the Chief, Common Carrier Bureau:

1. On November 24, 1987, American Telephone and Telegraph Company (AT&T) filed Transmittal No. 1069, proposing revisions to its SKYNET International Earth Segment Service which are scheduled to become effective December 31, 1987. The revisions are intended to enable AT&T to maintain service continuity for customers with earth station services currently offered by Comsat International Communications, Inc. (CICI) in CICI Tariff F.C.C. No. 1 and provided via the Etam, Jamesburg and Roaring Creek international earth stations.[1] These earth stations will be transferred to AT&T on December 31, 1987. The tariff revisions propose to follow CICI's existing tariff provisions to the extent that they are consistent with AT&T's existing private line tariffs.[2]

2. ITT World Communications, Inc. (ITT Worldcom) has filed a petition to reject or to suspend and investigate the captioned tariff revisions. ITT Worldcom argues that AT&T should be required to refile cost-supported rates because of the likelihood that AT&T's costs for the earth stations it is acquiring are significantly below the costs used to establish CICI's current rates. ITT Worldcom Petition at 1-3. ITT Worldcom further urges the Commission to require AT&T to eliminate or reformulate certain terms and conditions of the proposed tariffs which are more burdensome for users than those in CICI's Tariff F.C.C. No. 1. *Id.* at 3-5.

3. In reply, AT&T contends that the Tariff Division properly found good cause to grant AT&T's request for a waiver. AT&T Reply at 5-7. AT&T also argues that an investigation into the lawfulness of the interim rates (for which CICI provided full cost support) would be a waste of resources, particularly as AT&T plans to file its own cost-supported rates no later than May 1, 1988. *Id.* at 8-9. Finally, AT&T states that although its proposed revisions are reasonable and fully consistent with the Special Permission, it will reformulate those terms and conditions which ITT Worldcom finds objectionable. *Id.* at 9-14.

4. On December 28, 1987, AT&T filed Transmittal No. 1092, making further revisions to the captioned filing. These revisions propose to: (a) add part-time rates for SKYNET International Voice Grade Earth Segment Service; and (b) waive the notice of discontinuance requirement and the non-recurring Central Office Connection charge for all SKYNET International Earth Segment Services provided from the Etam, Jamesburg and Roaring Creek earth stations until AT&T's cost-supported rates become effective.

5. The Common Carrier Bureau has reviewed AT&T's proposed revisions as amended, the ITT Worldcom petition, and AT&T's opposition. We find that no compelling argument has been presented that the proposed tariff revisions are so patently unlawful as to require rejection, and that an investigation of the revisions is not warranted at this time.

6. Accordingly, IT IS ORDERED that the petition filed against American Telephone and Telegraph Company Tariff F.C.C. Nos. 7 and 10, Transmittal No. 1069, by the above-listed petitioner IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] The revisions were submitted pursuant to Special Permission No. 87-686, in which the Tariff Division found good cause to grant AT&T's application requesting waiver of the requirements of Sections 61.38, 61.58, and 61.59 of the Commission's Rules on the ground that AT&T currently lacks sufficient cost and demand information and has been unable to obtain relevant station records from CICI.

[2] The Tariff Division's grant of special permission was conditioned on AT&T's representation in its application that no existing customers will receive an increase in charges for service proposed in the filing and no existing customers will experience any non-recurring charges because of the transfer of the service from the previous facility provider to AT&T.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Cincinnati Bell
Telephone Company
Transmittal No. 474

Revisions to Tariff F.C.C. No. 35

ORDER

Adopted: September 29, 1987;Released: September 30, 1987

By the Chief, Common Carrier Bureau:

1. On July 31, 1987, the Cincinnati Bell Telephone Company (Cincinnati Bell) filed the captioned tariff revisions which are scheduled to become effective on October 1, 1987. Cincinnati Bell's filing proposes to increase rates for special access voice grade and high capacity services. It claims that increases are necessary because the shift from voice grade to high capacity service has been more rapid than forecasted in its 1987 annual access tariff filing, causing a shortfall in earnings. Transmittal No. 474, Description and Justification (D&J) at 4-5.

2. The Commission received petitions to reject or to suspend and investigate the proposed rate increase on August 11, 1987, from Western Union Telegraph Company (Western Union) and on August 17, 1987, from MCI Telecommunications Corporation (MCI) and the Ad Hoc Telecommunications Users Committee (Ad Hoc). Cincinnati Bell replied on August 27, 1987.

3. Ad Hoc and MCI argue that Cincinnati Bell has failed to justify applying rate increases only to voice grade and high capacity special access services. Ad Hoc Petition at 5; MCI Petition at 2-4. All three petitioners allege that Cincinnati Bell's proposal includes an unexplained 35.2 percent increase in the Expenses and Other Taxes category over the 1987 forecast. Ad Hoc Petition at 2; MCI Petition at 2; Western Union Petition at 2. Western Union argues that Cincinnati Bell should have used a 34 percent tax rate, the maximum marginal rate for corporations under the Tax Reform Act of 1986, instead of the 46 percent rate that it used. Western Union Petition at 4.

4. Ad Hoc argues that the effects of accelerated amortization of Account 232 (Station Connections - Inside Wire) must apply equally to all special access services. Ad Hoc Petition at 9-10. Western Union questions the basis for Cincinnati Bell's increase in expenses associated with the accelerated amortization. Western Union Petition at 3. Finally, Ad Hoc argues that any rate increases should be subject to the outcome of the Commission's strategic pricing investigation. Ad Hoc Petition at 10. *See* Investigation of Special Access Tariffs of Local Exchange Carriers, CC Docket No. 85-166, Phase II, Part 1, 2 FCC Rcd 3507 (1987).

5. Cincinnati Bell replies that although there have been deviations from forecasts in services other than voice grade and high capacity, their impact on total special access revenues has been minimal. Cincinnati Bell Reply at 10. To the charges of Western Union and MCI that it has not justified a 35 percent increase, Cincinnati Bell responds that these petitioners mistakenly compare the actual Expenses and Other Taxes category for special access, *including* private line customer premises equipment (CPE), to the projected Expenses and Other Taxes category for special access, *excluding* CPE figures. It next responds that Expenses and Other Taxes increased by 13.74 percent and that this increase is due principally to an underestimate of the impact of the direct assignment of WATS on special access. *Id.* at 5-7. Cincinnati Bell further states that the Commission has consistently found reasonable tax treatment similar to the treatment Cincinnati Bell has used, and that no deviation from this treatment is warranted. at 9. Finally, Cincinnati Bell argues that it appropriately reflected accelerated amortization of Account 232 for Ohio in the mid-course filing. *Id.* at 12.

6. The Common Carrier Bureau has reviewed Transmittal No. 474, the the petitions and Cincinnati Bell's reply. We find that no compelling argument has been presented that the tariff is patently unlawful so as to require rejection and that an investigation of the revisions is not warranted at this time. We will, however, make the rates in this filing subject to any decision regarding the strategic pricing of special access services in CC Docket No. 85-166.

7. Accordingly, IT IS ORDERED that the petitions of MCI Telecommunications Corporation, the Ad Hoc Telecommunications Users Committee, and Western Union Telegraph Company against Cincinnati Bell's Tariff F.C.C. No. 1, Transmittal No. 474, ARE DENIED to the extent indicated above and otherwise ARE GRANTED.

8. IT IS FURTHER ORDERED that the rate increase made by Transmittal No. 474 is subject to the outcome of the ongoing investigation of special access services. Investigation of Special Access Tariffs of Local Exchange Carriers, CC Docket No. 85-166, Phase II, Part 1, 2 FCC Rcd 3507 (1987).

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: January 25, 1988

NATIONAL EXCHANGE CARRIER ASSOCIATION FILES COST ACCOUNTING PROCEDURES MANUAL (Pleading Cycle Established)

On December 31, 1987, the National Exchange Carrier Association, Inc. (NECA) filed a cost accounting procedures manual for the separation of the costs NECA incurs in support of the Commission's access charge plan from NECA's total company costs.

The manual was filed pursuant to the requirements of *NECA's Request for Authority to Provide Intrastate Services to Exchange Carrier Members*, 2 FCC Rcd 6853 (1987). In that Ord er, the Common Carrier Bureau authorized NECA to engage in activities in relation to intrastate tariffs and revenue distributions, subject to certain conditions. The conditions require, among other things, that NECA file and obtain Commission approval of a cost accounting procedures manual that ensures that interstate tariffed charges will not be used to recover the costs NECA incurs in connection with the authorized intrastate activities.

Comments on the NECA manual should be filed no later than **February 24, 1988.** Replies should be filed no later than **March 10, 1988.** Comments should refer to file number AAD 8-1895.

Copies of the NECA filing may be obtained from International Transcription Services, Inc., 2100 M Street, N.W., Washington, D.C. 20036, (202) 857-3800. Copies are also available for public inspection in Room 812, 2000 L Street, N.W., Washington, D.C. 20554.

For further information contact William A. Kehoe III at (202) 632-7500.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 87-313

In the Matter of

Policy and Rules Concerning
Rates for Dominant Carriers

ORDER

Adopted: January 25, 1988; Released: January 26, 1988

By the Chief, Common Carrier Bureau:

1. On January 20, 1988, ALC Communications Corporation (ALC) filed a Motion To Defer Filing Deadlines or for Extension of Time (Motion) asking the Commission to alter the filing deadlines set forth in its January 6 Public Notice[1] in the above-captioned proceeding. The Notice requested parties that filed specific price cap plans to submit proposed changes to the Code of Federal Regulations that would be required to implement such plans. The draft rules are due no later than January 27, 1988. Comments thereon are due no later than February 10, 1988 and replies thereto by February 17, 1988.

2. ALC seeks a deferral of this filing schedule until after the Commission determines its price cap policy with greater specificity. ALC argues that the relative advantages and disadvantages of the price cap proposal must be evaluated before specific rules are drafted. It also argues that the Commission should decide the parameters of its price cap policy before requesting parties to expend resources drafting proposed rules. Motion at 2-3.

3. Alternatively, ALC requests an extension of the filing deadlines, with draft rules to be submitted by February 17, 1988, comments thereon by March 2, 1988 and replies thereto by March 16, 1988. ALC states that approval of its request will not harm any party and will ensure that the Commission's decision on "such a difficult issue" is "well reasoned" and fully analyzes "all affected interests". *Id.* at 3.

4. We deny ALC's motion. The draft rules being requested are solely for the purpose of providing largely technical assistance in evaluating proposed plans, many of which differ from each other. We make this request because it is efficient to do so. The expeditious conduct of our proceedings, consistent with the public interest, is always one of our objectives and rests upon an explicit statutory foundation. *See* 47 U.S.C. § 154 (j). In this connection we note that in formal hearings, which often are multi-party proceedings, the Commission's Rules expressly permit parties to file proposed findings of fact and conclusions of law before any determination of substantive issues is made. *See* 47 C.F.R. § 1.263. We believe that our more limited request for draft rules is entirely appropriate in the circumstances presented.

5. We also note that parties are not obliged to file any such proposals, nor to comment thereon. Failure to do so will not in any way affect our consideration of pleadings that any parties have filed heretofore. Our request therefore places no burden on any party which it does not voluntarily assume. Moreover, comments are expressly confined to the question whether the proposed rules appropriately implement proposed plans. For those choosing to file pursuant to the Notice, therefore, the Notice does not require an excessive expenditure of resources.

6. With respect to the alternative ground of ALC's Motion, and in light of the limited nature of the matters to be addressed in the scheduled filings, *see* para. 5, *supra*, we do not find that good cause for an extension of time has been demonstrated. *See generally* Public Notice, Motions for Extension of Time before the Common Carrier Bureau, 44 Rad. Reg. 2d(P&F) 96 (Com.Car.Bur. 1978).

7. IT IS THEREFORE ORDERED that the Motion To Defer Filing Deadlines or for Extension of Time filed by ALC Communications Corporation IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTE

[1] *FCC Public Notice*, "Parties in Price Cap Proceeding Requested To File Draft Rules Implementing Proposed Price Cap Plans," DA No. 88-6, released Jan. 6, 1988 (Notice). Competitive Telecommunications Association filed a "Statement in Support of Motion To Defer Filing Deadlines" on January 22, 1987.

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 86-309

In the Matter of

Inquiry into Policies to be
Followed in the Authorization
of Common Carrier Facilities
to Provide Telecommunications
Service Off of the Island of
Puerto Rico

ORDER

Adopted: January 26, 1988 Released: January 27, 1988

By the Chief, Common Carrier Bureau:

1. On January 7, 1988, the Commission issued a Public Notice which listed four petitions for reconsideration[1] received in this proceeding and set out the schedule for filing oppositions to these peititions and replies to the oppositions.[2] On December 28, 1987, the date petitions for reconsideration were due, CALL U.S., Inc. (CALL U.S.) filed a pleading in this proceeding, entitled "Reply Comments of CALL U.S., Inc." After review of this filing, the Common Carrier Bureau concludes that it should be treated as a petition for reconsideration, although it is not captioned as such. Accordingly, a Public Notice listing this filing as a petition for reconsideration in this proceeding and establishing filing dates for oppositions and replies has been released [3] by the Commission and will be published in the Federal Register.

2. To eliminate possible confusion and facilitate the processing of agency business, the Bureau hereby extends the dates for filing oppositions and replies established in the January 7th Public Notice to conform to the pleading cycle established for the CALL U.S. filing. Therefore, all oppositions to petitions for reconsideration in this proceeding are to be filed within fifteen days of the date of public notice of the CALL U.S. filing in the Federal Register.[4] Replies are due within ten days after the time for filing oppositions has expired.

3. Accordingly, IT IS ORDERED, that pursuant to Sections 4(j) and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(j) and 155(c), and authority delegated to the Chief, Common Carrier Bureau, pursuant to Sections 0.91 and 0.291 of the Commission's Rules, 47 C.F.R. §§ 0.91 and 0.291, the oppositions to the petitions for reconsideration listed in the Commission's January 7th Public Notice are to be filed with the Secretary, Federal Communications Commission within fifteen days of the date of public notice of the CALL U.S. filing in the Federal Register. Replies are to be filed within 10 days after the time for filing oppositions has expired.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] Petitions for Reconsideration filed by The Puerto Rico Telephone Company, A-Plus Information Processing Corporation, MCI Telecommunications Corporation, and General Comserv Corporation were reflected in the Notice.

[2] As published in the Federal Register, the Public Notice, "Petitions for Reconsideration and Clarification of Actions in Rule Making Proceedings," Report No. 1704, established January 28, 1988 as the date for filing oppositions. 53 F.R. 754 (January 12, 1988). (The FCC release of the Notice provides that oppositions are to be filed within fifteen days of the date of public notice of the petitions in the Federal Register. This is translated into a date certain when the Notice is published in the Federal Register.) Replies are to be filed within ten days after the time for filing opposition has expired.

[3] Public Notice, "Petitions for Reconsideration of Actions in Rule Making Proceedings," Report No. 1708, released January 21, 1988.

[4] A date certain for the filing of oppositions to the CALL U.S. petition will be included in the version of Report No. 1708 published in the Federal Register. *See* notes 2 & 3 *supra*.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Request for the Allocation of One-Half MHz in the 216 - 222 MHz Band for the Primary Use of the TV Answer System.	RM-6196

ORDER GRANTING EXTENSION OF TIME

Adopted: January 27, 1988; Released: January 28, 1988

By the Office of Engineering and Technology:

1. The Commission has requests to extend the comment period established in the *Public Notice*, Report No. 1703, of this proceeding. The *Public Notice* was issued on December 28, 1987, and provided a thirty day comment period. Requests were submitted by the George Mason University Foundation, Inc. (GMUF) and; the Community Antenna Television Association (CATA). GMUF requests an extension of the comment period to February 29, 1988, while CATA requests an extension to March 28, 1988.

2. GMUF is actively participating, under experimental authorization, in the TV Answer System field demonstrations. It argues that additional time is required to develop operational data for providing the Commission with a more complete record. CATA realizes the important public policy implications of the petition and requires additional time to consult with its members regarding the issues raised in the petition. For these reasons GMUF and CATA request an extension of the comment period in this proceeding.

3. The Commission concurs with GMUF and CATA that additional time will be useful in making the record in this proceeding complete. We believe that an extension of 30 days should provide interested parties with ample time to compile the information needed for filing comment. Hence, IT IS ORDERED that the periods for filing comments and replies in this proceeding ARE EXTENDED to February 29, 1988, and March 15, 1988, respectively.

4. This action is taken pursuant to authority found in Section 4(i), 302, and 303 of the Communications Act of 1934, as amended, 47 USC Sections 154(i), 302, and 303, and pursuant to Sections 0.31 and 0.241 of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION

Bruce A. Franca
Acting Chief Engineer

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

GTE Telephone
Operating Companies
Transmittal Nos. 300 and 360
Tariff F.C.C. No. 1

ORDER

Adopted: January 20, 1988 ; Released: January 22, 1988

By the Deputy Chief, Common Carrier Bureau:

1. On September 11, 1987, the GTE Telephone Operating Companies (GTOC) filed Transmittal No. 300, proposing revisions which are scheduled to become effective on January 23, 1988. These revisions require access customers to notify the telephone company at least two business days prior to the date on which service and billing are to be discontinued. The requests for discontinuance of service may be verbal or written, but a verbal request "must be followed, within 10 days, by written confirmation."

2. MCI Telecommunications Corporation (MCI) has filed a petition to reject or to suspend and investigate the captioned tariff revisions. MCI argues that it is not clear from the proposed revisions whether the two-day notice period required by the tariff for discontinuance of service begins upon verbal request, with a written confirmation to follow within 10 days for GTOC's records, or only upon actual receipt by the telephone company of the customer's subsequent written confirmation. MCI Petition at 3.

3. In reply, GTOC contends that it is clear from its proposed revisions that the verbal request constitutes the order to disconnect service because the tariff does not state that discontinuance will occur only after receipt of written confirmation. GTOC Reply at 3.

4. On January 19, 1988, GTOC filed further revisions to the captioned filing under Transmittal No. 360. These revisions clarify the notice of discontinuance provision to reflect GTOC's intention that the verbal request constitutes the order to disconnect service.[1]

5. The Common Carrier Bureau has reviewed GTOC's initial filing, its revised filing, the MCI petition, and GTOC's reply. We find that no compelling argument has been presented that the proposed tariff revisions are so patently unlawful as to require rejection, and that an investigation of the revisions is not warranted at this time.

6. Accordingly, IT IS ORDERED that the petition filed against GTE Telephone Operating Companies Tariff F.C.C. No. 1, Transmittal No. 300, by the above-listed petitioner IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Carl D. Lawson
Deputy Chief, Common Carrier Bureau

FOOTNOTE

[1] Pursuant to discussions with Tariff Division staff, GTOC also proposed revisions to clarify customer notification requirements when modification to the discontinuance request is required. As revised, the tariff provides that "[t]he customer must notify the Telephone Company of a delay or cancellation in the discontinuance request prior to the disconnect date."

☆ U.S. GOVERNMENT PRINTING OFFICE: 1988— 201-708/80010